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ABSTRACT

These hearings contain the text of the Packwood-Moynihan bill (S.2142) and other tuition tax-relief bills before the Senate (S.96, S.311, S.834, S.954, S.1570, and S.1781) as well as the testimony given January 18 and 19, 1978, before the Subcommitte on Taxation and Debt Management Generally of the Committee on Finance. (Author/IRT)

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TUITION TAX RELIEF BILLS

HEARINGS
BEFORE THE
SUBCOMMITTEE ON TAXATION AND
DEBT MANAGEMENT GENERALLY
OF THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
SECOND SESSION
ON

S. 96, S. 311, S. 834, S. 954, S. 1570, S. 1781, S. 2142
VARIOUS TUITION TAX RELIEF BILLS

JANUARY 18, 19, AND 20, 1978

PART 1 OF 2 PARTS
ORAL TESTIMONY
JANUARY 18 AND 19, 1978

Printed for the use of the Committee on Finance

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TUITION TAX RELIEF BILLS

WEDNESDAY, JANUARY 18, 1978

U.S. Senate,
Subcommittee on Taxation and
Debt Management Generally
of the Committee on Finance,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to notice, in room 2221, Dirksen Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

Present: Senators Packwood, Roth, Jr., Ribicoff, and Moynihan.

[The committee press release announcing these hearings and the text of the bills, S. 96, S. 311, S. 834, S. 954, S. 1570, S. 1781, S. 2142, follow. Oral testimony commences on p. 50.]

Finance Subcommittee on Taxation and Debt Management Sets Hearings on Tuition Tax Relief Bills

The Honorable Harry F. Byrd, Jr. (I.-Va.) Chairman, and the Honorable Bob Packwood (R.-Ore.), Ranking Minority Member of the Subcommittee on Taxation and Debt Management of the Finance Committee, today announced that hearings will be held on January 18, January 19, and January 20, 1978 on S. 96, S. 311, S. 834, S. 954, S. 1570, S. 1781, S. 2142 and other bills which may be introduced providing tax relief for persons paying tuition to elementary and secondary schools and colleges. The hearings will begin at 9:30 a.m. on all three mornings and will be held in Room 2221 Dirksen Senate Office Building. Additional hearings will be held if necessary.

Senator Byrd noted that the Senate has approved a tuition tax credit for higher education three times in the last sixteen months, most recently Senator Roth's amendment to the social security financing bill (H.R. 9346). He noted that the hearings will cover this subject and also the various bills concerning tuition incentives for elementary and secondary education (including S. 2142 introduced by Senators Packwood and Moynihan.)

Requests to testify.—The Chairman advised that witnesses desiring to testify during this hearing must submit their requests to Michael Stern, Staff Director, Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D.C. 20510, not later than Friday, January 13, 1978.

Consolidated testimony.—Senator Byrd also stated that the Subcommittee urges all witnesses who have a common position or with the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain. The Chairman urged very strongly that all witnesses exert a maximum effort to consolidate and coordinate their statements.

Legislative Reorganization Act.—Senator Byrd stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify must comply with the following rules:

1. A copy of the statement must be filed by the close of business two days before the day the witness is scheduled to testify.

2. All witnesses must include with their written statement a summary of the principal points included in the statement.

3. The written statements must be typed on letter size paper (not legal size) and at least 75 copies must be submitted by noon the day before the witness is scheduled to testify.

4. *Witnesses are not to read their written statements* to the Subcommittee, but are to confine their ten-minute oral presentations to a summary of the points included in the statement.

5. Not more than ten minutes will be allowed for oral presentations.

Written Testimony.—The Chairman stated that the Subcommittee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five (5) copies by Friday, January 27, 1978, to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

95TH CONGRESS
1ST SESSION

S. 96

IN THE SENATE OF THE UNITED STATES

JANUARY 10, 1977

Mr. HOLLINGS introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to allow a credit against income tax to individuals for certain expenses incurred in providing higher education.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting after section 44A the following new section:

"SEC. 44B. EXPENSES OF HIGHER EDUCATION.

"(a) GENERAL RULE.—There shall be allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount, determined under subsection

II

(b), of the expenses of higher education paid by him during the taxable year to one or more institutions of higher education in providing an education above the twelfth grade for himself or for any other individual.

"(b) LIMITATIONS.—

"(1) AMOUNT PER INDIVIDUAL.—The credit under subsection (a) for expenses of higher education of any individual paid during the taxable year shall be an amount equal to the sum of—

"(A) 75 percent of so much of such expenses as does not exceed $200,

"(B) 25 percent of so much of such expenses as exceeds $200 but does not exceed $500, and

"(C) 10 percent of so much of such expenses as exceeds $500 but does not exceed $1,500.

"(2) PRORATION OF CREDIT WHERE MORE THAN ONE TAXPAYER PAYS EXPENSES.—If expenses of higher education of an individual are paid by more than one taxpayer during the taxable year, the credit allowable to each such taxpayer under subsection (a) shall be the same portion of the credit determined under paragraph (1) which the amount of expenses of higher education of such individual paid by the taxpayer during the taxable year is of the total amount of expenses of higher education of such individual paid by all taxpayers during the taxable year.

"(3) REDUCTION OF CREDIT.—The credit under subsection (a) for expenses of higher education of any individual paid during the taxable year, as determined under paragraphs (1) and (2) of this subsection, shall be reduced by an amount equal to 1 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $25,000.

"(c) DEFINITIONS.—For the purposes of this section—

"(1) EXPENSES OF HIGHER EDUCATION.—The term 'expenses of higher education' means—

"(A) tuition and fees required for the enrollment or attendance of a student at a level above the twelfth grade at an institution of higher education, and

"(B) fees, books, supplies, and equipment required for courses of instruction above the twelfth grade at an institution of higher education.

Such term does not include any amount paid, directly or indirectly, for meals, lodging, or similar personal, living, or family expenses. In the event an amount paid for tuition or fees includes an amount for meals, lodging, or similar expenses which is not separately stated, the portion of such amount which is attributable to meals, lodging, or similar expenses shall be determined under regulations prescribed by the Secretary.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means—

"(A) an educational institution (as defined in section 170(b)(1)(A)(ii));

"(i) which regularly offers education at a level above the twelfth grade; and

"(ii) contributions to or for the use of which constitute charitable contributions within the meaning of section 170(c); or

"(B) a business or trade school, or technical institution or other technical or vocational school in any State, which (i) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; and (ii) is accredited by a nationally recognized accrediting agency or association listed by the United States Commissioner of Education; and (iii) has been in existence for 2 years or has been specially accredited by the Commissioner as an institution meeting the other requirements of this subparagraph.

"(3) STATE.—The term 'State' includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(d) SPECIAL RULES.—

"(1) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS AND VETERANS' BENEFITS.—The amounts otherwise taken into account under subsection (a) as expenses of higher education of any individual during any period shall be reduced (before the application of subsection (b)) by any amounts received by such individual during such period as—

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which under section 117 is not includible in gross income, and

"(B) education and training allowance under chapter 33 of title 38 of the United States Code or educational assistance allowance under chapter 35 of such title.

"(2) NONCREDIT AND RECREATIONAL, ETC., COURSES.—Amounts paid for expenses of higher education of any individual shall be taken into account under subsection (a)—

"(A) in the case of an individual who is a candidate for a baccalaureate or higher degree, only to the extent such expenses are attributable to courses of instruction for which credit is allowed toward a baccalaureate or higher degree, and

"(B) in the case of an individual who is not a candidate for a baccalaureate or higher degree, only to the extent such expenses are attributable to courses of instruction necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective.

"(3) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) to the taxpayer shall not exceed the amount of the tax imposed on the taxpayer for the taxable year by this chapter, reduced by the sum of the credits allowable under this subpart (other than under this section and section 31).

"(e) DISALLOWANCE OF EXPENSES AS DEDUCTION.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any expense of higher education which (after the application of subsection (b)) is taken into account in determining the amount of any credit allowed under subsection (a). The preceding sentence shall not apply to the expenses of higher education of any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such expenses for the taxable year.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section."

(b) The table of sections for such subpart A is amended by inserting after the item relating to section 44A the following:

"Sec. 44B. Expenses of higher education.".

SEC. 2. The amendments made by this Act shall apply to taxable years beginning on or after the date of enactment of this Act.

95th CONGRESS
1st Session

S. 311

IN THE SENATE OF THE UNITED STATES

January 18, 1977

Mr. Roth (for himself, Mr. Church, Mr. DeConcini, Mr. Dole, Mr. Domenici, Mr. Goldwater, Mr. Huddleston, Mr. Humphrey, Mr. Leahy, Mr. Magnuson, Mr. Ribicoff, Mr. Schmitt, Mr. Stafford, and Mr. Stevens) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

Entitled "The College Tuition Tax Relief Act of 1977".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1, of the Internal Revenue Code (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44D. EXPENSES OF HIGHER EDUCATION.

"(a) General Rule.—There shall be allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount, determined under subsection (b), of the educational expenses paid by him during the taxable year to one or more eligible educational institutions for himself, his spouse, or any of his dependents (as defined in section 152).

"(b) LIMITATIONS.—

"(1) AMOUNT PER INDIVIDUAL.—The credit under subsection (a) for educational expenses of any individual shall be an amount equal to—

"(A) so much of such expenses paid in taxable years beginning after December 31, 1976, but before January 1, 1978, as does not exceed $250,

"(B) so much of such expenses paid in taxable years beginning after December 31, 1977, but before January 1, 1979, as does not exceed $300,

"(C) so much of such expenses paid in taxable years beginning after December 31, 1978, but before January 1, 1980, as does not exceed $400, and

"(D) so much of such expenses paid in taxable years beginning after December 31, 1979, as does not exceed $500.

"(2) PRORATION OF CREDIT WHERE MORE THAN ONE TAXPAYER PAYS EXPENSES.—If educational expenses of an individual are paid by more than one taxpayer during the taxable year, the credit allowable to each such taxpayer under subsection (a) shall be the same portion of the credit determined under paragraph (1) which the amount of educational expenses of such individual paid by the taxpayer during the taxable year is of the total amount of educational expenses of such individual paid by all taxpayers during the taxable year.

"(c) DEFINITIONS.—For purposes of this section—

"(1) EDUCATIONAL EXPENSES.—The term 'educational expenses' means—

"(A) tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, and

"(B) fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

Such term does not include any amount paid, directly or indirectly, for meals, lodging, or similar personal, living, or family expenses. In the event an amount paid for tuition or fees includes an amount for meals, lodging, or similar expenses which is not separately stated, the portion of such amount which is attributable to meals, lodging, or similar expenses shall be determined under regulations prescribed by the Secretary.

"(2) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means—

"(A) an institution of higher education; or

"(B) a vocational school.

"(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means the institutions described in section 1202(a) or 491(b) of the Higher Education Act of 1965.

"(4) VOCATIONAL SCHOOL.—The term 'vocational school' means an area vocational education school as defined in section 108(2) of the Vocational Education Act of 1963.

"(d) SPECIAL RULES.—

"(1) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS AND VETERANS BENEFITS.—The amounts otherwise taken into account under subsection (a) as educational expenses of any individual during any period shall be reduced (before the application of subsection (b)) by any amounts received by such individual during such period as—

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which under section 117 is not includible in gross income, and,

"(B) an educational assistance allowance under chapter 35 of title 38 of the United States Code or education and training allowance under chapter 33 of title 38 of the United States Code.

"(2) Graduate, noncredit, and recreational, etc., courses.—Amounts paid for educational expenses of any individual shall be taken into account under subsection (a) only to the extent such expenses are attributable to courses of instruction for which credit is allowed toward a baccalaureate degree by an institution of higher education or toward a certificate of required course work at a vocational school and are not attributable to any graduate program of such individual.

"(3) Application with other credits.—The credit allowed by subsection (a) to the taxpayer shall not exceed the amount of the tax imposed on the taxable year by this chapter, reduced by the sum of the credits allowable under this subpart (other than under this section, section 31, and section 39).

"(4) Full-time student.—No credit shall be allowed under subsection (a) for amounts paid during the taxable year for educational expenses with respect to any individual unless that individual, during any four calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student above the secondary level at an eligible educational institution.

"(5) Spouse.—No credit shall be allowed under subsection (a) for amounts paid during the taxable year for educational expenses for the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151 (b) for the taxable year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for the taxable year.

"(e) DISALLOWANCE OF EXPENSES AS DEDUCTION.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any educational expense which (after the application of subsection (b)) is taken into account in determining the amount of any credit allowed under subsection (a). The preceding sentence shall not apply to the educational expenses of any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such expenses for the taxable year.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.".

(b) CONFORMING AMENDMENT.—

(1) The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following:

"Sec. 44D. Expenses of higher education.".

(2) Section 55 (c) (2) (B) (relating to imposition of minimum tax) is amended by striking out "and" at the end of clause (ix), by striking out the period at the end of clause (x) and inserting in lieu thereof a comma and the word "and", and by adding at the end thereof the following new clause:

"(xi) section 44D (relating to credit for expenses for higher education).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to educational expenses paid after June 30, 1977, in taxable years beginning after December 31, 1976, for courses of instruction commencing after June 30, 1977.

95TH CONGRESS
1ST SESSION

S. 834

IN THE SENATE OF THE UNITED STATES

MARCH 1 (legislative day, FEBRUARY 21), 1977

Mr. SCHWEIKER introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1954 to permit a taxpayer to deduct, or to claim a credit for, amounts paid as tuition to provide education for himself, for his spouse, or for his dependents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tuition Tax Relief Act of 1977".

SEC. 2. (a) Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

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"SEC. 44B. TUITION.

"(a) General Rule.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the sum of the amounts paid by him during the taxable year to eligible educational institutions as tuition for the attendance of the taxpayer, of the taxpayer's spouse, or of any dependents with respect to whom he is entitled to a personal exemption under section 151 (e).

"(b) Limitations.—

"(1) Amount per individual.—The amount of the credit allowed under subsection (a) for the taxable year with respect to amounts paid on behalf of any single individual as tuition shall not exceed $250.

"(2) Spouse.—No credit shall be allowed under subsection (a) for amounts paid during the taxable year for the education of the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151 (b) for the taxable year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for the taxable year.

"(3) Credit cannot exceed liability for tax.—The credit allowed under subsection (a) to any taxpayer may not exceed the excess (if any) of the tax imposed by this chapter for the taxable year over the sum of the credits allowable under section 33 (relating to foreign tax credit), section 37 (relating to credit for the elderly), section 38 (relating to investment in certain depreciable property), section 40 (relating to expenses for work incentive programs), section 41 (relating to contributions to candidates for public office), section 42 (relating to general tax credit), and section 44A (relating to expenses for household and dependent care services necessary for gainful employment).

"(c) DEFINITIONS.—For the purposes of this section—

"(1) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means—

"(A) an institution of higher education;

"(B) a vocational school;

"(C) a secondary school; or

"(D) an elementary school.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means the institutions described in sections 1201(a) and 491(b) of the Higher Education Act of 1965 and includes such similar institutions for graduate study as are certified by the Commissioner of Education for purposes of this section to the Secretary or his delegate.

"(3) VOCATIONAL SCHOOL.—The term 'vocational school' means an area vocational school as defined in section 195(2) of the Vocational Education Act of 1963 (as in effect on and after October 1, 1977).

"(d) DISALLOWANCE OF EXPENSES AS SECTION 162 DEDUCTION.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any tuition which (after the application of subsection (b)) is taken into account in determining the amount of any credit allowed under subsection (a). The preceding sentence shall not apply to any tuition incurred by any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such tuition for the taxable year.".

(b) The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following:

"Sec. 44B. Tuition.".

SEC. 3. (a) Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. TUITION.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a deduction an amount equal to the sum of the amounts paid by him during the taxable year to eligible educational institution(s) (as defined in section 44B(c)) as tuition for the attendance of the taxpayer, of the taxpayer's spouse, or of any dependents with respect to whom he is entitled to a personal exemption under section 151(e).

"(b) LIMITATIONS.—

"(1) AMOUNT PER INDIVIDUAL.—The amount of the deduction allowed under subsection (a) for the taxable year with respect to amounts paid on behalf of any single individual as tuition shall not exceed $1,000.

"(2) SPOUSE.—No deduction shall be allowed under subsection (a) for amounts paid during the taxable year for the education of the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151(b) for the taxable year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for the taxable year.

"(c) DISALLOWANCE OF EXPENSES AS SECTION 162 DEDUCTION.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any tuition which (after the application of subsection (b)) is taken into account in determining the amount of any deduction allowed under subsection (a). The preceding sentence shall not apply to any tuition incurred by any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such tuition for the taxable year.

"(d) ELECTION TO TAKE CREDIT IN LIEU OF DEDUCTION.—This section shall only apply in the case of any taxpayer who, for the taxable year, elects to take the deduction provided by this section in lieu of any credit against tax provided by section 44B (relating to credit for tuition). Such election shall be made in such manner and at such time as the Secretary shall prescribe by regulation.".

(b) (1) Section 62 of such Code (defining adjusted gross income) is amended by inserting after paragraph (13) the following new paragraph:

"(14) TUITION.—The deduction allowed by section 221.".

(2) The first sentence of subparagraph (A) of section 3402(m)(2) of such Code (relating to withholding allowances based on itemized deductions) is amended by striking out "other than paragraph (13)" and inserting in lieu thereof "other than paragraphs (13) and (14)".

(c) The table of sections for such part VII is amended by striking out the item relating to section 221 and inserting in lieu thereof the following new items:

"Sec. 221. Tuition.
"Sec. 222. Cross references.".

SEC. 4. The amendments made by this Act shall apply to taxable years beginning after the date of enactment of this Act.

95TH CONGRESS
1ST SESSION

S. 954

IN THE SENATE OF THE UNITED STATES

MARCH 9 (legislative day, FEBRUARY 21), 1977

Mr. DURKIN introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to permit a taxpayer to deduct, or to claim a credit for, amounts paid as tuition for his own education or the education of another individual.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44B. TUITION.

"(a) GENERAL RULE.—There is allowed to an individual, as a credit against the tax imposed by this chapter

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for the taxable year, an amount equal to the sum of the amounts paid by him during the taxable year to an eligible educational institution as tuition for the attendance of the taxpayer or of another individual.

"(b) LIMITATION.—The amount of the credit allowed under subsection (a) for the taxable year with respect to amounts paid on behalf of any single individual as tuition shall not exceed $300.

"(c) DEFINITIONS.—For purposes of this section—

"(1) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means—

"(A) an institution of higher education;

"(B) a vocational school;

"(C) a secondary school; or

"(D) an elementary school.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means an institution described in section 1202(a) or 491(b) of the Higher Education Act of 1965 and includes such similar institutions for graduate study as are certified by the Commissioner of Education for purposes of this section to the Secretary or his delegate.

"(3) VOCATIONAL SCHOOL.—The term 'vocational school' means an area vocational educational school as defined in section 195 (2) of the Vocational Educational Act of 1963 (as in effect on and after October 1, 1977).

"(4) Secondary school.—The term 'secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"(5) Elementary school.—The term 'elementary school' means a day or residential school which provides elementary education, as determined under State law.

"(d) Disallowance of Expenses as Deduction.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any educational expense which (after the application of subsection (b)) is taken into account in determining the amount of any credit allowed under subsection (a). The preceding sentence does not apply to the educational expenses of any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such expenses for the taxable year.".

(b) The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following:

"Sec. 44B. Tuition.".

(c) Section 6096(b) of such Code (relating to designation of income tax payment to presidential election campaign fund) is amended by striking out "and 44A" and inserting in lieu "44A and 44B".

SEC. 2. (a) Part VII of subchapter B of chapter 1 of such Code (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"**SEC. 221. TUITION.**

"(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction the sum of the amounts paid by the taxpayer during the taxable year to an eligible educational institution (as defined in section 44B (c)) for tuition for the attendance of the taxpayer or of another individual.

"(b) LIMITATION.—No deduction shall be allowed under subsection (a) for amounts paid during the taxable year for tuition with respect to any single individual to the extent that the sum of such amounts exceeds $1,000.

"(c) DISALLOWANCE OF EXPENSES AS SECTION 162 DEDUCTION.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any educational expense which (after the application of subsection (b)) is taken into account in determining the amount of any deduction allowed under subsection (a).

"(d) Election To Take Credit in Lieu of Deduction.—This section shall not apply in the case of any taxpayer who, for the taxable year, elects to take the credit against tax provided by section 44B (relating to credit for tuition). Such election shall be made in such manner and at such time as the Secretary shall prescribe by regulation.".

(b) (1) Section 62 of such Code (defining adjusted gross income) is amended by inserting after paragraph (13) the following new paragraph:

"(14) Tuition.—The deduction allowed by section 221.".

(2) The first sentence of subparagraph (A) of section 3402(m)(2) of such Code (relating to withholding allowances based on itemized deductions) is amended by striking out "other than paragraph (13)" and inserting in lieu thereof "other than paragraphs (13) and (14)".

(c) The table of sections for such part VII is amended by striking out the item relating to section 221 and inserting in lieu thereof the following new items:

"Sec. 221. Tuition.
"Sec. 222. Cross references.".

Sec. 3. The amendments made by this Act apply to taxable years beginning after the date of enactment of this Act.

95TH CONGRESS
1ST SESSION

S. 1570

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 18), 1977

Mr. MOYNIHAN introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to allow a credit against tax for amounts paid by an individual as elementary or secondary school tuition for the education of his dependent children.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALLOWANCE OF CREDIT.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting immediately before section 45 the following new section:

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"SEC. 44C. ELEMENTARY AND SECONDARY SCHOOL TUITION.

"(a) GENERAL RULE.—There is allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to 50 percent of the tuition paid by the taxpayer during the taxable year to one or more eligible educational institutions for any of his dependents (as defined in section 152).

"(b) LIMITATIONS.—

"(1) AMOUNT PER DEPENDENT.—The credit allowable under subsection (a) with respect to tuition paid for any dependent of the taxpayer shall not exceed $250 per year per dependent.

"(2) LIMITATION BASED ON ADJUSTED GROSS INCOME.—The amount of the credit allowable under subsection (a) (after the application of paragraph (1)) shall be reduced by an amount equal to 5 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceed $18,000.

"(c) DEFINITIONS.—For purposes of this section—

"(1) TUITION.—The term 'tuition' means tuition and fees required for the enrollment or attendance of a student at an eligible educational institution but does not include any amount paid, directly or indirectly, for meals, lodging, or similar personal, living, or family expenses. In the event an amount paid for tuition or fees include an amount for meals, lodging, or similar expenses which is not separately stated, the portion of such amount which is attributable to meals, lodging, or similar expenses shall be determined under regulations prescribed by the Secretary.

"(2) ELIGIBLE EDUCATIONAL INSTITUTIONS.—The term 'eligible educational institution' means an elementary or secondary school organized and operated by or as an organization described in section 501 (c) (3) which is exempt from taxation under section 501 (a).".

(b) REFUND OF EXCESS CREDIT.—

(1) Subsection (b) of section 6401 of such Code (relating to amounts treated as overpayments) is amended—

(A) by striking out "and 43 (relating to earned income credit)," and inserting in lieu thereof the following: "43 (relating to earned income credit), and 44C (relating to elementary and secondary school tuition)", and

(B) by striking out "sections 31, 39, and 43" and inserting in lieu thereof the following: "sections 31, 39, 43, and 44C".

(2) Paragraph (4) of section 6201 (a) (relat-

ing to erroneous credit under section 39 or 43) is amended—

(A) by striking out "section 39 or 43" in the caption and inserting in lieu thereof the following: "section 39, 43, or 44C", and

(B) by striking out "or section 43 (relating to earned income)," and inserting in lieu thereof the following: "section 43 (relating to earned income), or section 44C (relating to elementary and secondary school tuition),".

(c) CLERICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 6096 of such Code (relating to designation of income tax payments to Presidential Election Compaign Fund) is amended by striking out "and 44B" and inserting in lieu thereof "44B, and 44C".

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately after the item relating to section 44B the following new item:

"Sec. 44C. Elementary and secondary school tuition.".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to taxable years beginning after the date of enactment of this Act.

95th CONGRESS
1st Session

S. 1781

IN THE SENATE OF THE UNITED STATES

June 29 (legislative day, May 18), 1977

Mr. Anderson introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 to permit a taxpayer to deduct, or to claim a credit for, amounts paid as tuition to provide education for himself, for his spouse, or for his dependents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tuition Tax Relief Act of 1977".

Sec. 2. (a) Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

II

"SEC. 44C. EXPENSES OF HIGHER EDUCATION.

"(a) GENERAL RULE.—There shall be allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount determined under subsection (b), of the educational expenses paid by him during the taxable year to one or more eligible educational institutions for himself, his spouse, or any of his dependents (as defined in section 152).

"(b) LIMITATIONS.—

"(1) AMOUNT PER INDIVIDUAL.—The credit under subsection (a) for educational expenses of any individual shall be an amount equal to—

"(A) so much of such expenses paid in taxable years beginning after December 31, 1976, but before January 1, 1978, as does not exceed $250,

"(B) so much of such expenses paid in taxable years beginning after December 31, 1977, but before January 1, 1979, as does not exceed $300,

"(C) so much of such expenses paid in taxable years beginning after December 31, 1978, but before January 1, 1980, as does not exceed $400, and

"(D) so much of such expenses paid in taxable years beginning after December 31, 1979, as does not exceed $500.

"(2) PRORATION OF CREDIT WHERE MORE THAN ONE TAXPAYER PAYS EXPENSES.—If educational expenses of an individual are paid by more than one taxpayer during the taxable year, the credit allowable to each such taxpayer under subsection (a) shall be the same portion of the credit determined under paragraph (1) which the amount of educational expenses of such individual paid by the taxpayer during the taxable year is of the total amount of educational expenses of such individual paid by all taxpayers during the taxable year.

"(c) DEFINITIONS.—For purposes of this section—

"(1) EDUCATIONAL EXPENSES.—The term 'educational expenses' means—

"(A) tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, and

"(B) fees, books, supplies, and equipment required for courses of instruction at an eligible educational institution.

Such term does not include any amount paid, directly or indirectly, for meals, lodging, or similar personal, living, or family expenses. In the event an amount paid for tuition or fees includes an amount for meals, lodging, or similar expenses which is not separately stated, the portion of such amount which is attributable to meals, lodging, or similar expenses shall be determined under regulations prescribed by the Secretary.

"(2) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means—

"(A) an institution of higher education;

"(B) a vocational school;

"(C) a secondary school; or

"(D) an elementary school.

"(3) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means the institutions described in section 1202(a) or 491(b) of the Higher Education Act of 1965.

"(4) VOCATIONAL SCHOOL.—The term 'vocational school' means an area vocational education school as defined in section 108(2) of the Vocational Education Act of 1963.

"(d) SPECIAL RULES.—

"(1) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS AND VETERANS BENEFITS.—The amounts otherwise taken into account under subsection (a) as educational expenses of any individual during any period shall be reduced (before the application of subsection (b)) by any amounts received by such individual during such period as—

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which under section 117 is not includible in gross income, and,

"(B) an educational assistance allowance under chapter 35 of title 38 of the United States Code or education and training allowance under chapter 33 of title 38 of the United States Code.

"(2) GRADUATE, NONCREDIT, AND RECREATIONAL, ETC., COURSES.—Amounts paid for educational expenses of any individual at an eligibile educational institution which is an institution of higher education or a vocational school shall be taken into account under subsection (a) only to the extent such expenses are attributable to courses of instruction for which credit is allowed toward a baccalaureate degree by such an institution or toward a certificate of required course work at such vocational school and are not attributable to any graduate program of such individual.

"(3) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) to the taxpayer shall not exceed the amount of the tax imposed on the taxable year by this chapter, reduced by the sum of the credits allowable under this subpart (other than under this section, section 31, and section 39).

"(4) FULL-TIME STUDENT.—No credit shall be allowed under subsection (a) for amounts paid during the taxable year for educational expenses with respect to any individual unless that individual, during any four calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an eligible educational institution.

"(5) SPOUSE.—No credit shall be allowed under subsection (a) for amounts paid during the taxable year for educational expenses for the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151(b) for the taxable year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for the taxable year.

"(e) DISALLOWANCE OF EXPENSES AS DEDUCTION.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any educational expense which (after the application of subsection (b)) is taken into account in determining the amount of any credit allowed under subsection (a). The preceding sentence shall not apply to the educational expenses of any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such expenses for the taxable year.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.".

(b) CONFORMING AMENDMENT.—

(1) The table of sections for such subpart A is amended by inserting immediately before the item relating to section 45 the following:

"Sec. 44D. Expenses of higher education.".

SEC. 3. (a) Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. TUITION.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a deduction an amount equal to the sum of the amounts paid by him during the taxable year to any eligible educational institution (as defined in section 44B(c)) as tuition for the attendance of the taxpayer, of the taxpayer's spouse, or of any of his dependents (as defined in section 152).

"(b) LIMITATIONS.—

"(1) AMOUNT PER INDIVIDUAL.—The deduction under subsection (a) for educational expenses of any individual shall be an amount equal to—

"(A) so much of such expenses paid in taxable years beginning after December 31, 1976, but before January 1, 1978, as does not exceed $500,

"(B) so much of such expenses paid in taxable years beginning after December 31, 1977, but before January 1, 1979, as does not exceed $600,

"(C) so much of such expenses paid in taxable years beginning after December 31, 1978, but before January 1, 1980, as does not exceed $800, and

"(D) so much of such expenses paid in taxable years beginning after December 31, 1979, as does not exceed $1,000.

"(2) PRORATION OF CREDIT WHERE MORE THAN ONE TAXPAYER PAYS EXPENSES.—If educational expenses of an individuals are paid by more than one taxpayer during the taxable year, the deduction allowable to each such taxpayer under subsection (a) shall be the same portion of the credit determined under paragraph (1) which the amount of educational expenses of such individual paid by the taxpayer during the taxable year is of the total amount of educational expenses of such individual paid by all taxpayers during the taxable year.

"(c) DEFINITIONS.—For purposes of this section the terms 'educational expenses', 'eligible educational institution', 'institution of higher education', and 'vocational school' have the same meaning as such terms are given in section 44C(c).

"(d) Special Rules.—

"(1) Adjustment for certain scholarships and veterans benefits.—The amounts otherwise taken into account under subsection (a) as educational expenses of any individual during any period shall be reduced (before the application of subsection (b)) by any amounts received by such individual during such period as—

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which under section 117 is not includible in gross income, and,

"(B) an educational assistance allowance under chapter 35 of title 38 of the United States Code or education and training allowance under chapter 33 of title 38 of the United States Code.

"(2) Graduate, noncredit, and recreational, etc., courses.—Amounts paid for educational expenses of any individual at an eligible educational institution which is an institution of higher education or a vocational school shall be taken into account under subsection (a) only to the extent such expenses are attributable to courses of instruction for which credit is allowed toward a baccalaureate degree by such an institution or toward a certificate of required course work at such a vocational school and are not attributable to any graduate program of such individual.

"(3) FULL-TIME STUDENT.—No deduction shall be allowed under subsection (a) for amounts paid during the taxable year for educational expenses with respect to any individual unless that individual, during any four calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an eligible educational institution.

"(4) SPOUSE.—No deduction shall be allowed under subsection (a) for amounts paid during the taxable year for educational expenses for the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151 (b) for the taxable year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for the taxable year.

"(e) DISALLOWANCE OF EXPENSES AS DEDUCTION.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any educational expense which (after the application of subsection (b)) is taken into account in determining the amount of any deduction allowed under subsection (a). The preceding sentence shall not apply to the educational expenses of any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such expenses for the taxable year.

"(f) ELECTION TO TAKE CREDIT IN LIEU OF DEDUCTION.—This section shall only apply in the case of any taxpayer who, for the taxable year, elects to take the deduction provided by this section in lieu of any credit against tax provided by section 44c (relating to credit for tuition). Such election shall be made in such manner and at such time as the Secretary shall prescribe by regulation.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.".

(c) The table of sections for such part VII is amended by striking out the item relating to section 221 and inserting in lieu thereof the following new items:

"Sec. 221. Tuition.
"Sec. 222. Cross references.".

SEC. 4. The amendments made by this Act shall apply to educational expenses paid after June 30, 1977, in taxable years beginning after December 31, 1976, for courses of instruction commencing after June 30, 1977.

95th CONGRESS
1st Session

S. 2142

IN THE SENATE OF THE UNITED STATES

September 26 (legislative day, September 22), 1977

Mr. Packwood (for himself, Mr. Moynihan, Mr. Allen, Mr. Anderson, Mr. Bentsen, Mr. Cannon, Mr. Curtis, Mr. Danforth, Mr. DeConcini, Mr. Dole, Mr. Domenici, Mr. Durkin, Mr. Garn, Mr. Goldwater, Mr. Gravel, Mr. Griffin, Mr. Hansen, Mr. Hatch, Mr. Hathaway, Mr. Hayakawa, Mr. Heinz, Mr. Helms, Mr. Humphrey, Mr. Johnston, Mr. Laxalt, Mr. Leahy, Mr. Lugar, Mr. Mathias, Mr. McClure, Mr. Melcher, Mr. Nelson, Mr. Pearson, Mr. Randolph, Mr. Ribicoff, Mr. Schmitt, Mr. Schweiker, Mr. Sparkman, Mr. Stevens, Mr. Thurmond, Mr. Tower, Mr. Wallop, Mr. Young, and Mr. Zorinsky) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Internal Revenue Code of 1954 to permit a taxpayer to claim a credit for amounts paid as tuition to provide education for himself, for his spouse, or for his dependents, and to provide that such credit is refundable.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Tuition Tax Credit Act of 1977".

Sec. 2. (a) Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating

VII–O

to credits allowable) is amended by inserting before section 45 the following new section:

"SEC. 44C. TUITION.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the sum of the amounts paid by him during the taxable year to eligible educational institutions as tuition for the attendance of the taxpayer, of the taxpayer's spouse, or of any dependents with respect to whom he is entitled to a personal exemption under section 151 (e).

"(b) LIMITATIONS.—

"(1) AMOUNT PER INDIVIDUAL.—The amount of the credit allowed under subsection (a) to all taxpayers for the taxable year with respect to amounts paid on behalf of any single individual as tuition shall not exceed $500.

"(2) SPOUSE.—No credit shall be allowed under subsection (a) for amounts paid during the taxable year for the education of the spouse of the taxpayer unless—

"(A) the taxpayer is entitled to an exemption for his spouse under section 151 (b) for the taxable year, or

"(B) the taxpayer files a joint return with his spouse under section 6013 for the taxable year.

"(3) PRORATION OF CREDIT WHERE MORE THAN ONE TAXPAYER PAYS TUITION.—If the tuition of an individual is paid by more than one taxpayer during the taxable year, the credit allowable to each such taxpayer under subsection (a) with respect to that individual shall be the same portion of the sum of the amounts of the credit of each such taxpayer with respect to that individual determined under subsection (a) (subject to the limitation of paragraph (1) which the amount of tuition of such individual paid by the taxpayer during the taxable year is of the total amount of the tuition of such individual paid by all taxpayers during the taxable year.

"(c) DEFINITIONS.—For the purpose of this section—

"(1) ELIGIBLE EDUCATIONAL INSTITUTIONS.—The term 'eligible educational institution' means—

"(A) an institution of higher education;

"(B) a vocational school;

"(C) a secondary school; or

"(D) an elementary school.

"(2) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' means the institutions described in sections 1201 (a) and 491 (b) of the Higher Education Act of 1965 and includes such similar institutions for graduate study as are certified by the Commissioner of Education for purposes of this section to the Secretary.

"(3) Vocational school.—The term 'vocational school' means an area vocational school as defined in section 195 (2) of the Vocational Education Act of 1963 (as in effect on and after October 1, 1977).

"(4) Elementary and secondary schools.—The terms 'elementary school' and 'secondary school' mean, respectively, any elementary or secondary school (as defined in section 801 (c) and (h) of the Elementary and Secondary Education Act of 1965)—

"(A) of a local educational agency (as defined in section 801 (f) of such Act); or

"(B) which is privately operated but only if it is—

"(i) accredited or approved under State law, and

"(ii) exempt from taxation under section 501 (a) as an organization described in section 501 (c) (3).

"(d) Disallowance of Expenses as Section 162 Deduction.—No deduction shall be allowed under section

162 (relating to trade or business expenses) for any tuition which (after the application of subsection (b)) is taken into account in determining the amount of any credit allowed under subsection (a). The preceding sentence shall not apply to any tuition incurred by any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such tuition for the taxable year."

(b) REFUND OF EXCESS CREDIT.—

(1) Section 6104(b) of such Code (relating to amount treated as overpayments) is amended—

(A) by striking out "and 43 (relating to earned income credit)" and inserting in lieu thereof ", 43 (relating to earned income credit), and 44C (relating to tuition credit)", and

(B) by striking out "and 43," and inserting in lieu thereof ", 43, and 44C,".

(2) Section 6201(a)(4) of such Code (relating to assessment authority) is amended—

(A) by striking out "39 OR 43" in the caption and inserting in lieu thereof "39, 43, OR 44C", and

(B) by striking out "or section 43 (relating to earned income)," and inserting in lieu thereof", section 43 (relating to earned income), or section 44C (relating to tuition credit),".

(c) The table of sections for such subpart is amended by inserting immediately before the item relating to section 45 the following:

"Sec. 44C. Tuition.".

Sec. 3. The amendments made by this Act shall apply to taxable years beginning after December 31, 1979.

Senator PACKWOOD. The committee will come to order.

We start today the first of 3 days of hearings on the subject of educational tax credits.

As you are all aware, there are a number of bills introduced on this subject, and the hearings will encompass all of those bills. The rules of this committee are that we normally limit witnesses to 10 minutes in terms of their presentation in chief. However, ample time is allowed for questions and answers. Both Senator Moynihan and I have indicated to the committee staff and to the reporter we are prepared to spend the morning, the afternoon, and the evening, if necessary, to finish the witnesses each day. So I don't think we will find ourselves limited by any constraints of time on a subject which Senator Moynihan and I and the other 49 cosponsors of this bill consider one of the most important pieces of legislation to be introduced in this Congress.

The legislation goes to the very heart of educational and tax philosophy in this country. If the philosophy of the Packwood-Moynihan bill is adopted by this Congress, we will be saying for the first time to the people in this country, to the rich, to the poor, and specially to the middle-income taxpayer, for the first time you don't have to go hat in hand and plead poverty to get a loan or a grant from the Federal Government; you don't have to go just to a school that happens to have Federal loan programs, you can go to any school, public or private, primary, secondary, vocational, college, of your choice, you can pay tuition and you can take a portion of that tuition off of your income tax and, most importantly, if you happen to be too poor to pay any income tax, or only a slight income tax, and you have a bigger tuition credit than your tax, it is refundable.

To the very poor and to the middle-income groups and, specially those in the urban central areas of this country, refundability is a most essential element.

There are those who will speak in opposition to this bill for constitutional reasons. Senator Moynihan and I are fully aware that this is a controversial bill and that indeed somebody is going to take it to court. I am convinced it is constitutional, I am convinced that presented with the full facts of this case that the Supreme Court will find it constitutional.

There are those who oppose this bill for other than constitutional reasons, fearing that perhaps other propositions for education will be diminished if this bill passes. For one, I want to say that that is not my intent. I have supported increases in educational expenditures in the past, I continue to do so now, and I expect to do so in the future.

This bill is unrelated in my mind to those propositions and in no way will diminish the support that we now give to education in this country through a variety of other devices, but I feel it is critical we turn around the direction that this country is going in terms of centralism, in terms of trying to run the country, educationally, economically, and otherwise, from Washington, D.C.

The people in this country who know what they need, educationally, are the people who have to pay for it, not just the parents of college students, I am talking about the 35-year-old widow who out of necessity is forced to go back to school for further education because of the death of a husband, I am talking about a 20-year-old who decides he wants to be a diesel mechanic and goes to a trade or vocational school, I am talking about the parents of those who want to send their child to a private primary or secondary school, be it religious or otherwise.

I emphasize in closing in my mind the principal purpose of this bill is not to aid primary and secondary parochial schools, this bill applies equally to public and private schools, primary, secondary, vocational, and higher education. Any school district, any public school district is welcome to take advantage of the provisions of this bill.

The overwhelming bulk of the benefits of this bill are going to go to people who go to public schools. To the extent that there is a secondary or tertiary benefit to those who attend private schools or religious schools, so be it. My intention is to give aid to the middle income and to the lower income taxpayers of this country or those who pay no tax regardless of where they are to go to school or send their children to school. This is the primary purpose of this bill.

To the extent that it has a secondary effect in aiding or giving some kind of tertiary support of private schools, so be it, that is not the primary purpose.

Senator MOYNIHAN. Today we commence 3 days of hearings on tuition tax credits and similar proposals to provide Federal assistance through the income tax system for families trying to provide their children with the best available education.

The bill that Senator Bob Packwood and I introduced, in conjunction with half the members of the U.S. Senate, would provide a personal income tax credit of up to $500 for every school or college student whose education entails the payment of tuition by them or their families.

This is a simple and straightforward idea and, I submit, an idea whose time has finally come. The people of this Nation are ready for it. They want it. They deserve it.

For decades now, the American middle class has patiently stood by as national social policy has been focused on the needs of others. The middle-income wage earner has dutifully paid taxes to support a host of domestic and international programs from which he might expect to derive little or no immediate benefit for himself and his family. He has not doubted—nor do I—that these programs are well-intended and worthwhile uses of hard-earned dollars. He has not flinched—nor do I—at a pattern of redistributional policies that has generally sought to improve the lot of others less fortunate.

There is one issue, however, where he stands tall and straight and unyielding on a matter of the deepest concern to him and his family: The education of his children. It is traditionally a middle-class concern. One might even term it a defining characteristic of the middle-income family: How to obtain the best possible schooling for the next generation, and how to insure that the family will be able to pay for as much of that education as its children can absorb.

In far the greatest measure, education in the United States is supported with tax funds collected by local, State and Federal governments. At the elementary and secondary level, 90 percent of all students are enrolled in tuition-free public schools. At the college level, three-quarters of them are enrolled in State colleges and universities where the cost of education is partly subsidized. No Nation has ever developed a public education system to rival ours. It is one of the glories of our republic.

But another of the features of education in this pluralistic land is the presence of a strong and deeply-rooted private sector: Schools and colleges not under public control and subsidized but modestly, if at all, by public sources. For millions of American families, these are the schools and colleges that provide the education they want for their children. As institutions, they bring diversity and richness to our educational system. They are not rivals of the public institutions so much as essential supplements to it.

The measures before us in these hearings are intended to provide modest financial relief to families who elect to send their children to private schools and colleges, and also to those who choose public colleges and universities—and public schools—that must charge tuition. The proposed legislation would employ the personal income tax structure in a familiar and honorable way: augmenting the disposable income of persons who incur expenses of a sort that Federal policy defines as worthy of special attention in the Tax Code.

There is ample precedent within the present Tax Code. Scholarships and fellowships, for example, are already exempt from Federal income taxation, as are educational benefits provided through the GI bill and social security system. Preschool expenses may be claimed by some families through the existing child care credit. In these and sundry other ways, Federal policy already acknowledges that the costs of schooling deserve favorable treatment within a comprehensive tax structure.

But all of these are special cases and their benefit is available only to narrowly defined groups within the population. We have not yet recognized the heavy cost burden borne by the ordinary family who pays those taxes, the family also faced with mounting educational expenses for school and college. It is time we did so. It is time we acknowledged that the ordinary family's insistence on providing its children with the best obtainable education results in costs that the Federal Government should help it to bear, not by giving it a gift or a handout, but simply by allowing it to keep a bit more of the money it earns for itself. For that is all a tax credit does, it lets people use a little more of their own income for purposes they deem important.

Our bill does not seek to aid schools per se, but rather the people enrolled in them. It is not a private school bill; more than four-fifths of the total benefit will accrue to college and university students, three-quarters of whom study in public institutions. It is not a rich man's bill; most of the benefit will go to families earning well under $20,000 a year, and by making the credit "refundable" the proposed legislation will also provide a real financial boost to low-income families with limited tax liability.

Although the hearings we commence today are the first that the Senate Finance Committee has ever held on this subject, educational assistance through the tax system is not a new idea. Six times in the past decade the full Senate has approved similar legislation. In 1973, then Secretary of the Treasury George Shultz testified in support of tax credits for persons enrolled in private elementary and secondary schools. The House and Senate both agreed to allocate funds in the fiscal 1978 budget resolution for tuition tax relief. The opportunity is now at hand to complete the process and to recognize that this is a social policy idea whose time has come. The parents and children of America deserve no less and should settle for no less.

I thank you Mr. Chairman.

Senator PACKWOOD. Senator Roth has an opening statement, but before he makes it let me say in appreciation to him that we should not be as far along in these hearings today were it not for the effort he has made on college tuition tax credits over the past years that he has been in the Senate, and specifically we would not be where we are today but for the effort he attemped and very narrowly was defeated in attempting to add tuition tax credits to the social security bill as it passed the House and Senate last year.

Senator MOYNIHAN. With my unwaivering support as a member of the conference.

Senator PACKWOOD. I say again for all of us who are in this we cannot thank you enough for the leadership you took when not many other people were around to rally support. I remember when he offered the bill first and people pooh-poohed it and laughed at it and you plugged away, and for Pat and myself, thank you very much.

Senator ROTH. Thank you, Bob, for those generous remarks.

I want to express my appreciation to Pat Moynihan for his support during the closing days of the last year's session, and I am pleased that the Senate Finance Committee is opening these hearings both on my college tax credit as well as assistance to elementary and secondary schools.

I might say that I for one have been a longtime believer that there is a need to insure the viability of private schools as well as public schools.

I am a strong believer in the public school system, but I think that, as Mr. Moynihan has pointed out, it is about time we look at the other side of the problem.

I want to address myself primarily this morning to the college tuition tax credit where I do believe the time has come for its enactment. It is clear that a vast majority in both the House and the Senate are in favor of the tuition tax credits, and I for one believe that the tuition tax credit will be enacted into law in 1978.

There is a vital need for the adoption of tax relief for middle-income families struggling to send their children to college. The average annual cost of education at a public university is up over 40 percent in the past 5 years. A private college's yearly bite has increased over 35 percent in the same period. Because of these soaring costs and growing tax burdens middle-income families are finding it more and more difficult to send their children to college. There are the people caught in the middle.

People making between $10,000 and $25,000 pay almost half of the taxes in this country, yet they do not qualify for any of the Government aid programs designed to provide relief for college education costs, or very few of them qualify. Soon we will have two groups of our society left in college, the very poor and very rich, but the middle group, the very taxed, will be unable to afford it.

The American Council on Education, which represents more than 1,500 private and public colleges, has estimated that a $250 tax credit would benefit 7 million students and enable 320,000 more students to attend college. These studies also found nearly 90 percent of the benefits would go to those earning less than $25,000.

Despite overwhelming support for the college tax credit in both the House and the Senate, a small but vocal group is mounting a massive attack on tuition tax credits. The principal opponents of the college tax credits are the big spenders in Congress and in the administration, the ones who believe that all roads must lead to Washington. Their arguments against the tax credits are weak, misleading, and inaccurate, but their underlying objection to a tuition tax credit is that it would leave less money for them to take from the taxpayers for new spending programs.

They claim the tax credit is too expensive. But the only time the big spenders talk about economy in Government is when tax relief is proposed for middle-income taxpayers.

They also believe any additional relief should be provided through an expanded system of grants, based on their definition of need, but I believe there is something fundamentally wrong in the growing concept that working taxpayers should come to Washington to apply, beg, or fill out forms for Government aid programs financed by their own tax dollars.

The college tax credit would allow taxpayers to keep a larger portion of their own earnings to spend on a college education for their children. It is an idea whose time has come and I am confident Congress will enact this legislation to provide middle-income taxpayers relief from a financial burden no other generation has ever experienced.

Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you, Senator.

Our first witness today is Senator Richard Schweiker, of Pennsylvania, who I might say is another of the early entrees into the field of tuition tax credit support, and not just for colleges but for primary and secondary and vocational schools.

Dick.

STATEMENT OF HON. RICHARD S. SCHWEIKER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SCHWEIKER. Thank you very much, Mr. Chairman. I am delighted to be here. It is good to see all of the supporters and advocates of this measure before me and to be able to come and strongly support the hearings for tuition tax relief, and also to thank Senators Roth, Packwood, and Moynihan for their leadership and help. We are at a very critical crossroads in this battle and I look for great things this year. I am pleased that the Senators before me are taking the lead within the committee, which obviously is where the first big step is taking place. I have a complete statement I would like to include in the record, and I would like to highlight it now, if that is all right.

Senator PACKWOOD. It will be included.

Senator SCHWEIKER. Thank you.

Mr. Chairman, I greatly appreciate the opportunity to testify before the Senate Finance Committee this morning in support of tuition tax relief in general, and the Schweiker tuition tax relief bill, S. 834, in particular. I know the committee has had to change its schedule in order to hold hearings now, and I appreciate that because it means a tuition tax relief measure can be seriously considered by the full Senate before the end of this session of Congress.

S. 834, the Schweiker Tuition Tax Relief Act, introduced in March 1977 would provide tax relief for taxpayers who pay tuition at a public or private school including elementary, secondary, and postsecondary institutions.

There are 7.7 million students in nonpublic elementary and secondary schools. The parents of these children support the public schools through their Federal, State, and local taxes. If these children had to be educated by the public schools, the additional cost to the taxpayer would be approximately $17 billion a year. Obviously local school districts, particularly in urban areas, could never assume the burden if the nonpublic schools closed.

The average cost of educating a child at a public school is greater than the cost of educating a student at a nonpublic school. Particularly, the parochial schools have demonstrated that they can provide top quality education at a low cost per student.

In the city of Philadelphia, in 1976 it cost on the average of $400 to educate a student in the parochial schools, and an average of $1,900 in the public schools—30 percent of the students in Philadelphia attend parochial schools.

The U.S. National Center for Education Statistics projects that in 1984, due to rising costs, enrollments in private elementary and secondary schools are expected to drop 50 percent.

The statistics for colleges are no more encouraging.

The cost of a private college education rose 118.8 percent between 1964 and 1975, and 54 percent in the last 5 years. In 1976, the average annual cost of a private 4-year college was $5,000. The cost of a public university rose 98.4 percent between the years of 1964 and 1975, and 57 percent in the last 5 years. Public 2-year schools have increased in cost an incredible 130 percent in 5 years.

The American Association of State Colleges and Universities suggests that there has been a 20 percent drop in the number of lower and middle-income students participating in higher education since 1969.

Only 10 percent of the basic educational opportunity grant awards in 1976 went to families with incomes over $12,000.

Let me emphasize what these statistics suggest: Private elementary and secondary schools provide a great service in educating a substantial number of children, particularly in our urban areas, and they are in financial trouble because the middle and lower income parents who have used them for years can no longer afford to send their children to these schools. The same is true at the postsecondary level for public and private schools.

Essentially, the issue of tuition tax relief gets down to whether or not the American people have the right and the real access to educate their children, or themselves, in the institution and manner of their own choosing.

Our educational system has traditionally included two complementary branches, public and private.

Nonpublic schools represent many different traditions and they encourage the development of different points of view. None of us here today needs to be reminded that the interaction of different points of view is what keeps our country great and an exciting place to live.

From the many letters of support I have received from my constituents on S. 834, I catch a common theme.

These are people who have saved for years to give their children private or public or college educations. They soon find that the money they have saved will not nearly cover dramatically increasing educational expenses. Parents of college students already fill out seemingly endless financial aid forms only to be told that at $10,000, or $12.000, or $15,000 they make too much money to qualify. I agree with them that there is no way a family making $15,000 a year can send a child to a public 4-year university without some help. I also feel that the best form of assistance this family could receive is tax relief. Our Federal educational bureaucracy is already too large. We do not need any new Federal programs which increase the bureaucracy or place an additional paperwork burden on our already over paperworked schools and citizens.

Mr. Chairman, in closing let me make two final points. First, that proponents of tuition tax relief legislation support public elementary and secondary education. I have long advocated and supported public education aid and programs on the Education Subcommittee of the Human Resources Committee and the Senate Labor-HEW Appropriations Subcommittee.

I have also consistently supported Federal aid to public education, in the forms of direct student loans and grants and institutional aid. My interest in tuition tax relief has not diminished my support for our other educational programs. In fact, I have so much confidence in our public schools that all five of my children attend or have graduated from public schools. Second, although I feel S. 834 is the best tuition tax relief bill for the Congress to pass, I also support the other bills which have been introduced in this area.

All who sponsor or cosponsor tuition tax relief legislation, and I understand that 12 of the 18 members of this committee are included in this group, share the common goal of seeing a composite package reported favorably from the Senate Finance Committee, passed by the Senate and treated similarly in the House of Representatives. I plan to work actively to see that the main tenets of S. 834 are included in the final bill reported from this committee.

For example, I wish to see both a tax deduction and a tax credit offered, and part-time students included as beneficiaries of the bill. However, I know my colleagues share my feeling when I say that those who support tuition tax relief are members of a coalition which is not going to quit during this second session of the 95th Congress, until they are successful.

Thank you again for this opportunity to appear before you.

Senator PACKWOOD. Dick, I agree completely, specially in your last paragraph, the bills that we are here considering, there is not a perfect bill yet and there are ample witnesses to come and I for one am perfectly open to amendments, to changes to thought. I have no questions, Pat.

Senator Moynihan. Well, if the Senator will bear with me while I pursue a line that his inquiry has opened up that seems to me to be of the first importance, it has to do with the relative cost of Government-run education as against other forms of education sponsored by community groups.

In Philadelphia, I believe you said, Senator Schweiker, the per pupil cost in the parochial elementary schools was $400 a year and in the public system $1,900 a year?

Senator Schweiker. That is correct.

Senator Moynihan. I calculate the cost of the nongovernment system at about 22 percent of the government system. In New York City, the ratio is about 24.7 percent. I wouldn't be surprised if we found something like this all around the country, and particularly when we hear from the Office of Education it seems to me legitimate to ask about this because it is your understanding, I believe, sir, that the quality of education is equivalent.

Senator Schweiker. I would think in Philadelphia that is certainly true.

Senator Moynihan. And there are those who think for some purposes it is even superior, and these are the normal judgments about schools that go on. Opinions differ. But no one suggests there is a lesser system and a greater system. Yet the cost ratio is 4 to 1.

Now, it seems to me I remember back in the 1920's in New York State, Al Smith began developing as an aspect of progressive government the idea that the State ought to operate certain kinds of functions, particularly to generate some electricity to provide what he called a public yardstick against which to measure the efficiency and as it were the honesty of private activities.

It seems to me that recently with the shift from the private to the public sector that we could usefully introduce the idea of a private yardstick to measure the efficiency and, if you will, the honesty of public activities.

We are talking here about the function of education in our country. If indeed we find a system of education capable of producing the same results at one quarter the cost of the dominant system, I mean it bears a certain inquiry, and I sometimes wonder if it isn't the sheer efficiency of nongovernment education that makes it so threatening to government.

I wonder if you would want to comment on that?

Senator Schweiker. Well, that is a very important point, Senator Moynihan. To follow your point, which I think is extremely valid, as these private schools close, the public schools can't meet the burden in the Philadelphia area. I am estimating my bill will cost $2 billion, but the figure that I think is important is as nonpublic schools phase out somebody is going to have to put up $17 billion to educate the children in the public schools.

So actually tuition tax relief legislation is a good investment to on a 4 to 1 return, because it is cheaper to educate children in nonpublic schools. No one seems to be addressing themselves to that issue except this committee.

Senator Moynihan. Thank you, sir.

Senator Packwood. Bill.

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Senator Roth. Yes, I would like to congratulate you for your very informative statement, Senator Schweiker.

One thing that has particularly concerned me, as far as the average family is concerned, at the elementary and secondary level, is that it seems to me that what we have done is foreclosed the option of many families to send their children to private schools, parochial school, whatever it might be, simply by the sheer cost. The fact that the average family is finding the cost of living increasing substantially, the fact that they are in many cases paying higher taxes not only at the Federal level but at the State and local level, makes it very difficult in many instances for the average family to pay the additional cost to send their child to a private elementary and secondary college. That wasn't true maybe, 10, 20, 30 years ago when State and local taxes were very low.

I read in the paper, Pat, that for the first time State taxes now have exceeded $100 billion. That is being paid by middle America.

What bothers me is that this is supposed to be the country where a family has options, choices. But the cost of the public sector, in taxes and inflation, has foreclosed the option of giving a different type of education for their children of many people. It seems to me that that balance has to be redressed. We have to put it back in that perspective.

We are trying to give people a basic choice, if they choose to do so.

Today, in many cases, that option is not available for many hardworking families. That in many ways seems to me the thrust of the problem with respect to elementary and secondary private education.

Senator Schweiker. I think, Senator Roth, the point you are making is that we are robbing middle America of the right to send their kids to college. That is really what is happening here. We are devising no realistic program except for tuition tax relief as a way of remedying that problem. And I agree that we are robbing middle and lower income taxpayers of the right to send their kids to college.

Senator Roth. That is correct. I am not only saying that with respect to college, I am saying that with respect to elementary and secondary schools, and I think this is something that should be a matter of serious national concern.

Senator Schweiker. If tuition tax relief is not passed, we are setting in motion an action that ultimately could sink the public urban schools. No system of public urban schools can bear a portion of the increased cost of $17 billion as nonpublic schools close, without some substantial Federal aid. The Congress has not been willing to put substantial Federal aid into the urban schools.

Senator Moynihan. I would like to expand on a point which Senator Roth has made, which is the element of competition as between sources of education.

In the New York papers this morning you will learn that in a burst of disciplinarian zeal the City University is going to require that all persons entering the junior class pass a ninth-grade achievement test in mathematics.

Well I went to City College before I joined the Navy and I will tell you that wasn't the City College I went into, and the point is, if there are fewer alternatives, there is necessarily a deterioration in the product. I mean we are dealing here with some elementary economics of monopoly. Monopoly pricing will tell you a lot about this. I want to say I exaggerated, I was perhaps not fully fair to the parochial school systems of New York. Someone handed me a story, an article from the recent New York magazine—your recent figures are $400 per pupil, Senator Schweiker, in Philadelphia. In New York, in the New York Diocese it is $462, but whereas Philadelphia spends $1,600 on the private counterpart New York City does a much better job. We spend $2,600. And so for a ratio of 6 to 1 we get the same product.

There is an element of monopoly pricing here and we should not ignore it, there is an element of making the public sector know there are alternatives to it.

Senator **Roth**. Thank you, Senator Schweiker.

Senator **Packwood**. Dick, thank you very much.

Senator **Schweiker**. Thank you.

[The prepared statement of Senator Schweiker follows:]

PREPARED STATEMENT OF U.S. SENATOR RICHARD S. SCHWEIKER

Mr. Chairman, I greatly appreciate the opportunity to testify before the Senate Finance Committee this morning in support of Tuition Tax Relief in general, and the Schweiker Tuition Tax Relief Bill, S. 834, in particular. I know the Committee has had to change its schedule in order to hold hearings now, and I appreciate that because it means a Tuition Tax Relief measure can be seriously considered by the full Senate before the end of this session of Congress.

S. 834, the Schweiker Tuition Tax Relief Act, introduced in March, 1977, would provide tax relief for taxpayers who pay tuition at a public or private school including elementary, secondary, and postsecondary institutions.

There are 7.7 million students in nonpublic elementary and secondary schools. The parents of these children support the public schools through their federal, state and local taxes. If these children had to be educated by the public schools, the additional cost to the taxpayer would be approximately $17 billion a year. Obviously local school districts, particularly in urban areas could never assume the burden if the nonpublic schools closed.

Over 51 percent of private school students come from families with incomes under $15,000 a year.

The average cost of educating a child at a public school is greater than the cost of educating a student at a nonpublic school. Particularly, the parochial schools have demonstrated that they can provide top quality education at a low cost per student. Two of the most recent sets of statistics clearly substantiate this. In New York City in 1976, it cost, on the average, $2,647 to educate a child in the public schools as opposed to $462 in the Catholic Schools. Many of the children in these parochial schools were one year ahead of their public school counterparts. Seventy-eight percent of the students in Catholic grammar schools in Manhattan are minority students. In the city of Philadelphia, in 1976 it cost on the average of $400 to educate a student in the parochial schools, and an average of $1,900 in the public schools. Thirty percent of the students in Philadelphia attend parochial schools.

The U.S. National Center for Education Statistics projects that in 1984, due to rising costs, enrollments in private elementary and secondary schools are expected to drop 50 percent.

The statistics for colleges are no more encouraging.

The cost of a private college education rose 118.8 percent between 1964 and 1975, and 54 percent in the last 5 years. In 1976, the average annual cost of a private 4-year college was $5,000. The cost of a public university education rose 98.4 percent between the years of 1964 and 1975, and 57 percent in the last 5 years. Public two-year schools have increased in cost an incredible 130 percent in 5 years.

The American Association of State Colleges and Universities suggests that there has been a 20 percent drop in the number of lower and middle income students participating in higher education since 1969.

In 1959, half of all college students chose a private school. Today 25 percent do.

Estimates from some scholars suggest that for every increase in tuition of $100, 3 percent of a student body must leave school.

Only 10 percent of the Basic Educational Opportunity Grant Awards in 1976 went to families with incomes over $12,000.

Let me emphasize what these statistics suggest: private elementary and secondary schools provide a great service in educating a substantial number of children, particularly in our urban areas, and they are in financial trouble because the middle and lower income parents who have used them for years can no longer afford to send their children to these schools. The same is true at the postsecondary level for public and private schools.

Essentially, the issue of tuition tax relief gets down to whether or not the American people have the right and the real access to educate their children, or themselves, in the institution and manner of their own choosing. I feel very comfortable with the notion that the American taxpayer should have greater direct control over his educational tax dollar. I also believe we are strong as a nation today because we have consistently supported all types of education. We have a tradition of allowing our citizens freedom of choice insofar as possible. Our educational system has traditionally included two complementary branches, public and private. Those who have chosen to educate their children in the nonpublic schools have continued through their taxes to support the public schools. Their reasons for placing their children in private shools are numerous—some like the location, others the emphasis on a set of values, still others a particular type of teaching used within a school. What these parents have found is that private schools are qualitatively different from public schools and from each other. There is no monolithic private school movement just as no two private schools are exactly alike. Nonpublic schools represent many different traditions and they encourage the development of different points of view. None of us here today needs to be reminded that the interaction of different points of view is what keeps our country great and an exciting place to live.

From the many letters of support I have received from my constituents on S. 834, I catch a common theme. No one wants government to totally underwrite their education expenses. What they want is a modest amount of help so they can continue to meet their obligations. These are people who have saved for years to give their children private or college educations. They soon find that the money they have saved will not nearly cover dramatically increasing educational expenses. These families are angry—they feel that as taxpayers they bear the brunt of rising expenses due to inflation, with no help from the government they support. Parents of college students already fill out seemingly endless financial aid forms only to be told that at $10,000, or $12,000, or $15,000 they make too much money to qualify. I agree with them that there is no way a family making $15,000 a year can send a child to a public four-year university without some help. I also feel that the best form of assistance this family could receive is tax relief. Our federal educational bureaucracy is already too large. We do not need any new federal programs which increase the bureaucracy or place an additional paperwork burden on our already over paperworked schools.

Mr. Chairman, in closing let me make two final points. First, is that proponents of tuition tax relief legislation support public elementary and secondary education. I serve on both the Education Subcommittee of the Human Resources Committee and the Senate Labor-Hew Appropriations Subcommittee. I have consistently supported federal aid to public education, in the forms of direct student loans and grants and institutional aid. My interest in tuition tax relief has not diminished my support for our other educational programs. In fact, I have so much confidence in our public schools that all 5 of my children attend or have graduated from public schools. Second, although I feel S. 834 is the best tuition tax relief bill for the Congress to pass, I also support the other bills which have been introduced in this area. All who sponsor or cosponsor tuition tax relief legislation, and I understand that 12 of the 18 members of this Committee are included in this group, share the common goal of seeing a composite package reported favorably from the Senate Finance Committee, passed by the Senate and treated similarly in the House of Representatives. I plan to work actively to see that the main tenets of S. 834 are included in the final bill reported from this Committee. For example, I wish to see both a tax deduction and a tax credit offered, and part-time students included as beneficiaries of the bill. However, I know my colleagues share my feeling when I say those who

support tuition tax relief are members of a coalition which is not going to quit during this second session of the 95th Congress, until they are successful.

Thank you again for this opportunity to appear before you.

Senator Packwood. Our next group is a panel, Mr. Robert Lamborn, Rabbi Bernard Goldenberg, Dr. Al Senske, and Mr. Frederick Calder.

Before you start let me say to the panel and everyone else who will testify, I read all the statements that were turned in yesterday, and without exception every statement on both sides is excellent. You have no idea what a privilege it is as we start these hearings to have the caliber of testimony that we are obviously going to have and, second, I did not find a single sentence of hate or rancor or alienation of your opponents with any kind of charging of malicious motives, and this is not often true in many of the subjects that we consider in this Congress, and it is a privilege as we start to have the high caliber of people and statements that we are going to have.

PANEL OF PRIVATE ELEMENTARY AND SECONDARY SCHOOL WITNESSES CONSISTING OF DR. ROBERT L. LAMBORN, EXECUTIVE DIRECTOR, COUNCIL FOR AMERICAN PRIVATE EDUCATION; RABBI BERNARD GOLDENBERG, ASSOCIATE DIRECTOR, NATIONAL SOCIETY FOR HEBREW DAY SCHOOLS; DR. AL H. SENSKE, SECRETARY, ELEMENTARY AND SECONDARY SCHOOLS, THE LUTHERAN CHURCH—MISSOURI SYNOD; AND FREDERICK C. CALDER, HEADMASTER, GERMANTOWN FRIENDS SCHOOL, PHILADELPHIA, PA.

Mr. Lamborn. Thank you, sir.

Senator Packwood. I am going to ask, if you can, to hold the panel in total to about 20 minutes, then take questions.

Mr. Lamborn. Yes.

STATEMENT OF ROBERT L. LAMBORN, EXECUTIVE DIRECTOR, COUNCIL FOR AMERICAN PRIVATE EDUCATION

Mr. Lamborn. The Council for American Private Education welcomes this opportunity to participate in these hearings.

I am Robert Lamborn, Executive Director of the Council for American Private Education.

With me on this panel are Rabbi Bernard Goldenberg. President of the Council. Rabbi Goldenberg represents the National Society for Hebrew Day Schools. Dr. Al Senske, representing the schools Lutheran Church—Missouri Synod, and Mr. Frederick Calder, representing the National Association of Independent Schools.

CAPE is a coalition of 14 national organizations serving private (nonpublic) schools at the preschool, elementary, and secondary levels—approximately 15,000 schools enrolling nearly 4.2 million schoolchildren. CAPE and its member organizations are nonprofit and support admissions policies which are nondiscriminatory on the basis of race, color, and national origin. These organizations, by enrollment, represent some 85–90 percent of American private schools. CAPE's members are: The American Lutheran Church; American Montessori

Society; Association of Military Colleges and Schools of the U.S.; Friends Council on Education; Lutheran Church—Missouri Snyod; National Association of Episcopal Schools; National Association of Independent Schools; National Association of Private Schools for Exceptional Children; National Catholic Educational Association; National Society for Hebrew Day Schools (Orthodox Hebrew); National Union of Christian Schools; Seventh-day Adventist Board of Education, K–12; Solomon Schechter Day School Association (Conservative Hebrew); and the U.S. Catholic Conference.

The members of the Council see public and private schools as complementary public service agencies serving the public needs of a pluralistic society. Together, public and private schools provide alternative educational opportunities for the Nation's children and make possible the exercise of parental choice in the education of their children. Each contributes to the strength and vitality of the other—and all to the vitality of the communities which they serve. It is sound public policy to enact legislation which serves to maintain a wide variety of educational options and to make those options available to families of as wide a socioeconomic range as possible.

Tuition tax credit bills designed particularly to serve lower and middle-income families having members attending reputable educational institutions of all types on all levels clearly qualify as such legislation.

At these hearings and in separate written testimony, members of CAPE will comment upon the characteristics and concerns of the schools they serve or operate, and upon the significance of the tuition tax credit legislation under consideration from their perspectives. Others will testify on matters of economics, sociology, constitutional law, and parental choice. The comments which follow deal with four general considerations: the extent and variety of the Nation's private schools; the socioeconomic background of families having children in private schools; the position of private schools with regard to racial nondiscrimination, and the role of private schools in American society. They will close with a brief discussion of three specific matters which should be clarified in the final drafting of any tuition tax credit legislation.

The extent and variety of the Nation's private schools—latest available figures, published by the National Center for Education Statistics, indicate an estimated 49.1 million children attended elementary and secondary schools in the fall of 1976 and 9.8 percent (4.8 million) of them attended private schools. There were approximately 106,000 elementary and secondary schools; at conservative count, 17,950 (16.8%) were private. Significant additional numbers of children attended preschools operated under private auspices. In terms of purpose, size, administrative structure, and operational style, the private schools are markedly heterogeneous. While some have no church affiliation, the large majority are affiliated in one degree or another with some religious body.

A recent National Institute of Education study of private school enrollments, using 1975–76 figures, provides the information that the Catholic schools enroll about 75 percent of the private school students; that the Lutheran schools enroll about 5 percent; that Baptist, Calvinist, Episcopal, Hebrew, Quaker, and Seventh-day Adventist schools enroll significant numbers; and that there are a considerable number of other groups of church-related schools.

The socioeconomic background of families having children in private schools—Bureau of Census figures provide a clear picture of the financial status of families having children in private schools. Of the families having children in private schools in 1975, 5 percent had gross annual incomes of $5,500 or under; 10 percent of $7,400 or under; 25 percent of $11,600 or under; 50 percent of $17,100 or under; and 75 percent of $25,150 or under.

Other studies show substantial percentages of private school children in Elementary and Secondary Education Act title I target districts. In major urban areas, which have large disadvantaged populations, high percentages of the total school-age populations attend private schools. The most recent figures available are for 1970–71, but they appear reasonably representative of the situation today: Boston, 23.9 percent; Chicago, 24.5 percent; Cleveland, 32.2 percent; Milwaukee, 26.1 percent; New Orleans, 27.4 percent; New York, 24.1 percent; Philadelphia, 31.7 percent; and San Francisco, 23.4 percent.

Private schools have made a major commitment to serve these disadvantaged populations through the maintenance of inner-city schools and provision for scholarship aid at schools outside the inner city.

The position of private schools with regard to racial nondiscrimination—the vast majority of private schools actively support admissions policies which are nondiscriminatory on the basis of race, color, and national origin. The schools of the CAPE member organizations enroll between 85 and 90 percent of those attending private schools.

All support racially nondiscriminatory admissions policies, as do many non-CAPE-member schools. Even among those schools which were organized in the late 1950's and early 1960's in response to the desegregation of the public schools, a substantial number have abandoned their original positions on race and adopted open admissions policies.

It is safe to say, therefore, that well over 90 percent of private school students attend schools which have racially nondiscriminatory admissions policies. Nearly 90 percent is assured by the CAPE membership alone and, given the requirements of section 501(c)3 of the Internal Revenue Code, the percentage is necessarily at a substantially higher level.

CAPE, acting for all of its members, participated in an amicus capacity at the appeals and again at the Supreme Court level in support of the black parents in *Runyon* v. *McCrary*, a case decided in favor of the parents and against the private schools which were charged with discriminatory admissions practices. The black enrollment in private schools, at latest report at 6.4 percent of the total enrollment, has been steadily rising. Private schools in the inner cities serve large numbers of minority children; the scholarship grants made by private schools go in substantial part to minority representatives.

In discussing the position of private schools with regard to civil rights, a clear distinction must be made between, on one hand, considerations of race, color, and national origin and, on the other, religion. It is entirely appropriate—and not discriminatory in any pejorative sense—for religiously oriented institutions to make special efforts to serve families sharing their announced religious beliefs. While most private schools are, in fact, open to members of all faiths, discretionary preferential consideration of applicants and employees on the basis of religion is a proper exercise of first amendment rights.

THE ROLE OF PRIVATE SCHOOLS IN AMERICAN SOCIETY

Private schools have served American society since earliest colonial times, reflecting the felt needs of the people as those needs have changed through nearly 350 years of our history. Operating under "marketplace" forces, they have adapted to changing value orientations and to competitive pressures which have made certain that they were responsive to social needs.

Their present numbers and variety attest to the importance which people today place upon the services they render.

Ten percent of American families with school-age children elect to send their children to private schools, although in most cases they must do so after providing taxes to support the public schools. In the process, through tuitions and contributions, they—and those others who support private schools although they have no children in them—finance the education of one-tenth of the Nation's schoolchildren out of private funds, relieving the general populace of this portion of the expense of the Nation's schools.

These private school expenses place a heavy financial burden on many lower- and middle-income families in the easiest of times. In the present financial climate, the burden becomes close to unbearable for many. If these families are to have realistic educational options, if our pluralistic society is to benefit from the creative strengths inherent in a society of diverse ideological persuasions and experimental backgrounds, if our educational system is to benefit from the collaborative—and, to a constructive degree, competitive—efforts of strong public and private sectors, then it is important to find a mechanism which at least in part offsets the escalating financial burdens faced by those families which, if they could, would elect to have their children attend private schools of their choice.

Tuition tax credit legislation provides a promising mechanism for advancing this purpose, particularly when it includes a "refund" provision for the benefit of the least affluent.

At some point, if it is appropriate, I do have three inquiries with matters of detail, if they might be raised at an appropriate point I would care to.

Thank you.

The next presentation will be Rabbi Goldenberg.

Senator Packwood. Rabbi.

STATEMENT OF RABBI BERNARD GOLDENBERG, ASSOCIATE DIRECTOR, NATIONAL SOCIETY FOR HEBREW DAY SCHOOLS

Mr. Goldenberg. Thank you very much, Mr. Chairman. I represent the National Society for Hebrew Day Schools. We have about 450 Hebrew day schools in the United States. These schools offer a combined curriculum of Hebrew and general studies and we have about

83,000 students. We sponsor what is known as a double curriculum. We pursue excellence in education both in general studies and in terms of our Hebrew studies.

Graduates of our schools have won national and international renown in the professions, in public service, in business, and scientific endeavors. Our graduates serve the public good and will continue to do so. No one questions whether the skill was developed in a nonpublic school or whether the motivation to serve humanity of the love of chemistry and biology was forged in a public or nonpublic setting. I have students, I have friends, who have turned literally their nights into days in trying to find a cure for cancer. No one pulls their elbow or taps on their shoulder and says, "Hey, buddy, where did you get your love for humans or knowledge of biochemistry, in a public or nonpublic school?

We hopefully pray that what they are looking for they will find.

So much for the good news. Now for the bad news.

Our tuition fees cover only 40 to 50 percent of our budget. The 10 percent of our student body, those who are capable of doing so, pay the full tuition. We have no parochial or control system where a local church or synagogue pays for the upkeep of the schools. As I said 10 percent pay full tuition. Some 10 to 20 percent receive very large or almost full scholarships. It is the middle class, the entire spectrum of the middle class that is caught in a very tight financial bind. Without help for the middle class, without scholarships, I know a number of families where the wives have to go out to work only to pay tuition fees for their children. And so frequently the middle class parent, the mainstay of our schools, loses the option of educational choice and has to give up the school of his choice.

Senator Packwood was right, we are concentrated in the urban areas. The middle class urban areas feel this crunch mightily.

Let me point out one more thing from our own experience. In urban areas, the loss of a school, the loss of educational options, means the elimination of an entire neighborhood, the loss of spiritual resources, and failure of the American dream. Fifty percent of the Jewish students in New York City, for example, attend Hebrew day schools, and I must tell you that in our scheme, in our scheme of things, what makes the city or what makes a neighborhood is not a church steeple or a synagogue, but in our scheme of things it is the school that makes the neighborhood, it is the school that is the stabilizing agency of our neighborhood, and where the middle-class parents cannot afford to send a child to a Hebrew day school, and where the school does not have the means for scholarship, then it shatters that neighborhood and shatters that parent.

In some small measure bill 2142, will give the middle-class parent some help, will help ease the financial strain. I would like to say that I look upon the entire spectrum of middle-class parents as the new disadvantaged.

One more thing, we pride ourselves in the United States on the involvement of the citizen, the common citizen. In our school setup it is the parent who is involved in setting up the school, who serves on the board, who has a day-by-day ongoing relationship to the school, rather than a faraway look in his eyes looking on a monolith of the school.

He is involved day by day. You take away the option, the choice of school, and you take away the private enterprise of parents in terms of the education of his own children.

We believe that tuition tax relief credit is constitutionally valid and requires no religious means test. It will help to maintain institutions which have added to the American dream and give some help to parents in the education of their children. If such an alternative can be preserved, the Nation will be preserved.

What is left for me to say perhaps is to pick up a phrase from Senator Moynihan, who says he likes to demystify Marxist phraseology.

I recall when I was in camp and I had a counselor. I was very young in those days and the counselor was trying to teach us not only nature but something called living reality. One evening sitting around the bonfire he picked on my friend, a kid by the name of Steve, and was going to teach him living reality. He said, "Steve, supposing you are out there and a bull comes charging in at you, what are you going to do?" Steve said, "Well, I am going to look for a house and I am going to hide in there." So the counselor said, "Supposing there is no house there," and Steve said, "I am going to look for a tree. I am going to climb that tree." "Supposing there is no tree there?" "I am going to run like mad." The counselor said, "But the bull is faster than you." Steve said, "I think you want the bull to get me."

What I want to say in conclusion, is that the middle class and the nonpublic school world sometime feel that someone wants the bull to get us.

Thank you very much.

Senator Packwood. Dr. Senske.

STATEMENT OF DR. AL H. SENSKE, SECRETARY, ELEMENTARY AND SECONDARY SCHOOLS, THE LUTHERAN CHURCH—MISSOURI SYNOD

Mr. Senske. Mr. Chairman, this testimony is in support basically of S. 2142. It is made on behalf of the 180,000 students that are enrolled in the early childhood elementary and secondary schools which are operated by the Luthern Church—Missouri Synod. This church body also operates a network of colleges that serves many more additional students. My remarks today will be basically from the context of elementary and secondary education.

I think what I say about Lutheran schools is applicable to many other Protestant schools. The parents of these 180,000 students, of which I am one, represents a variety of faiths, races, and ethnic origins. We enjoy the privilege of not only being able to utilize these schools but of also to support them, to be involved in the operation of them, to have a real voice in what happens inside of these schools.

We are very greatful as parents for this freedom to chose an education that is in keeping with our own value systems. We enjoy the freedom to be able to participate in the free exercise of religion through education, and we are grateful to the churches, to the Lutheran churches, in this case, for providing much of the school funding out of church contributions which, of course, are also our own personal contributions. We, the people of this church are very grateful for the freedom and right to serve the public, as we feel we do serve the public, in trying to meet the educational needs of the public with quality education of which moral and spiritual development is at its heart.

We consider it a privilege to cooperate in this country's educational enterprise and to mutually support other private systems of education and public education.

We appreciate the opportunity that we have had to contribute to the common good of America for over 250 years, and these contributions I have tried to identify in my written testimony as values to children and youth, and to parents, to the church, to society in general.

But we are very concerned—concerned about the ability of parents to be able to have an educational choice in the future, whether that choice be in our schools or someone else's.

We are concerned about the rising costs. We are concerned about the ability to continue to serve the poor and very high percentage of nonwhite parents and students in the schools of our church body.

We serve 13 percent nonwhite at the elementary and early childhood level. Twenty percent are nonwhite at the secondary level.

We are concerned about a proper understanding of the first amendment. We appreciate the tuition tax credit bill and we support it because we think it goes beyond good will. We think that it provides some tangible evidence of public support toward the contributions of nonpublic education. Instead of threatening the liberties it is going to enhance them. It is a very large step, we feel, toward a more true pluralism and better understanding of the real intent of the first amendment.

Lutheran schools like many schools of other systems are committed to a continuation of their programs and they will continue in cooperation with private and public education. In that goal we pledge our support to that which will insure a quality education for all of America's people, and we think that this bill is one of those steps.

Thank you.

Senator PACKWOOD. Thank you, Dr. Lenske.

STATEMENT OF FREDERICK C. CALDER, HEADMASTER, GERMANTOWN FRIENDS SCHOOL, PHILADELPHIA, PA.

Mr. CALDER. Mr. Chairman, Senators, my name is Frederick Calder. I am headmaster of the Germantown Friends School in Philadelphia, a coeducational day school for elementary and secondary students numbering about 830.

I am testifying this morning in behalf of the National Association of Independent Schools, a voluntary membership association comprising about 800 schools across the country and some 300,000 students.

We are grateful to have the chance to be here today.

As an association, we are committed deeply to the time-honored right of parents to choose the form of education they wish for their children, a right that was exercised by Quakers when they founded my own school, Germantown Friends, in 1945. We believe in the rich diversity that private elementary and secondary schools have offered the American educational system since well before the beginning of the Republic.

But one of our major concerns is to broaden access to private schools, a fact attested to by the dramatic growth of financial aid programs throughout our member schools in recent years.

During the last 5 years, for example, there has been a 46-percent increase in the number of students receiving financial aid in our schools, from 21,000 to 30,000 students today. This year our member schools are expending $43 million for scholarship aid.

In my own school, 23 percent of the student body is receiving scholarship aid, and we are spending $340,000, or some 17 percent of our annual budget, to help people who cannot afford the full tuition.

Another of our major concerns is that burgeoning costs and continuing inflation that require higher tuitions are pricing lower and middle income people out of the market, thus limiting their right to choose.

In my own school, some 60 to 70 percent of the families report both parents working, in part, presumably, to pay tuitions for their children.

Each year as our tuitions go up we note that several families are forced to drop out for economic reasons.

The tuition tax credit approach is particularly appealing because relief goes directly to the consumer, freeing the schools from excessive Government regulations and assuring they remain accountable to those who patronize us.

Contrary to the opinion of some critics, I think it is important to note that the member schools of the National Association are also deeply committed to the expansion of minority enrollments. During the last 10 years minority enrollment has grown from 1.5 to 7 percent of the total, or 19,000 students.

At Germantown Friends, minority enrollment comprises 17 percent of the student body, and we have raised since 1965 more than $900,000 from local foundations and corporations, specifically for minority scholarships.

Finally, it is our belief that the long established Government policy to provide financial aid to college and university students has been sound and successful and that it is time to extend that much needed help to the elementary and secondary students of our country through tuition tax credit legislation.

Thank you, Mr. Chairman.

Senator PACKWOOD. Thank you.

You made reference to Germantown being started in 1845 by the Quakers. Were most of the private elementary and secondary schools of the early 19th century, or at the time of the founding of this country, church schools or church-related schools?

Mr. CALDER. I think nearly all of them were at that time.

Senator PACKWOOD. As I understand, the public school movement in this country didn't start even at the earliest until the 1820's and took a firm hold in the 1840's, so it would be fair to say that as far as the founders of this country were concerned, as they understood private education, they understood that churches by and large ran the schools; is that correct?

Mr. CALDER. I think that is correct, although I guess there were a number of town academies founded in the early days.

Senator PACKWOOD. The overwhelming bulk were church-related schools?

Mr. CALDER. Yes.

Senator Packwood. Is it also true that in almost every instance most of those schools in one form or another received public money?

Mr. Calder. I think that is true in the form of appropriations from local communities.

Senator Packwood. Yes, not from the States, in most cases, but from the local communities. Genuine public revenues in one form or another were raised through a taxing process or lottery process or some kind of rate process and then given not for total cost but for some portion of those private religious schools because it was regarded as being in the public interest?

Mr. Calder. That is true.

Senator Packwood. I have no other questions.

Pat?

Senator Moynihan. Mr. Chairman, may I perhaps expand on this point. The largest experience of public aid to education in early times is that of the State of New York, which just at the turn of the 19th century began allocating western land. These moneys routinely went to such schools as existed, and they were, to my knowledge, without exception church-related schools. There may have been one such, exception but I am not aware of it. And then, such is the case with the presence of public moneys, Satan insinuated himself, I am sorry to have to say, in 1827, in New York City. I hope the President does not hear this, but the Baptists were found padding their payroll. The scandal led to investigation which led to reform. There would now be something called public schools and hence, in New York City, to this day, it is P.S. 104. And the bible used was to be a Protestant bible, and the Archdiocese of New York chose not to enter—there was a question whether it would or wouldn't—and by 1840 the public school system commenced, which exists to this day.

The point, however, is that there was no question in the minds of the people at that time that State aid to church-related schools was constitutional. The contrary though did not occur, and this is deeply documented. We must understand that the notion of unconstitutionality is a political movement of the mid-19th century. I am sorry to say it is associated with nativism and it is the last relic of a certain kind of group prejudice.

I am not that much against prejudice but I like to get it identified, as the rabbi said.

In 1876, President Grant was thinking of running for a third term and he introduced into his party platform the assertion that:

> The public school system of the several States is the bulwark of the American Republic and with a view to its security and permanence, we recommend an amendment to the Constitution of the United States forbidding the application of any public funds or property for the benefit of any school or institution under sectarian control.

We have here a distinguished constitutional lawyer in Senator Ribicoff. Senator, wouldn't you agree that if it is proposed that the Constitution be amended to forbid something, then the presumption is that what is to be forbidden is currently allowed?

Senator Ribicoff. The only thing is I don't have as much confidence in President Grant—I prefer not to use that argument.

Senator Moynihan. I simply mean that in 1876 it was thought something that you would have to amend the Constitution in order to forbid. This is recent history, it does not go back to the Founders. Not to take too much time, I would just press Dr. Senske on one point.

Sir, if the State of New York is deficient in any respect, it is that it does not have that sufficient proportion of Lutherans which any well ordered community would desire.

I was wondering if you could speak to the question of comparative school costs that Senator Schweiker mentioned, with respect to the 180,000 children you have in all manner of settings, rural, urban, suburban. Do you find that there is a (margin of efficiency) in your schools?

Mr. SENSKE. Yes, we do, at the elementary level, and this is a national statistic. The average cost per pupil of operating expenses only, is $700 per year. At the secondary level it is almost double, about $1,400. This tends to be higher on the east coast than, of course, than it is in the Midwest.

Senator MOYNIHAN. What would that run, about 50 percent of the public school expenditure?

Mr. SENSKE. I would say that is close.

Senator RIBICOFF. If the Senator would yield, I understand that in 1976 the average cost per pupil in the public schools throughout the country was $1,600 a year. Now in 1976 there were 5.3 million students in private elementary and secondary schools. If these 5.3 million students were placed in the public school system, the overall cost to localities and States would be some $8½ billion. So we see what the situation is when it comes to the amount of money we are talking about.

I am sorry, Senator, for having taken your time.

Senator MOYNIHAN. The Senator is surprisingly accurate. The newest figures for the estimated per pupil average expenditure is $1.581, rounded to $1,600, and that would put your cost at 44 percent of the national average.

Mr. SENSKE. At the elementary level.

Senator MOYNIHAN. And there is a question of relative efficiency here that ought not to be ignored. Among other things, the capacity of school systems such as your own to perform a public function at a significantly lower price is a possibility that ought not to be lost as we consider some of the advantages of making it possible for such efforts to continue.

Far from increasing public expenditure, these schools do as well or better at half the cost or less.

Thank you, doctor.

Senator PACKWOOD. Bill.

Senator ROTH. I would like to follow up with Senator Moynihan's line of questioning.

Have any studies been made as to the effectiveness of the private school system? For example, there have been a number of studies recently that have shown that, I believe, the quality or the results of public education are quite distressing. Children are not learning to read, write, and do arithmetic as well today as they did 10 years ago.

My question to you, Dr. Senske, or any of the other members of the panel is, What has been the trend in private schools as far as the effectiveness is concerned? Have there been studies made?

Mr. SENSKE. We have conducted—this, of course, is up to each individual school to conduct a testing system, but they have found in their testing programs that quality has been maintained over these last years when apparently this has not been the case in some other forms of education. It is increasingly difficult, I think, to maintain quality as you have more of a pluralism within your student bodies, but we feel that quality is being maintained.

Mr. GOLDENBERG. If I may add, Senator Roth, we have had studies on the west coast, Middle West, east coast, and by and large our student body shows 1 to 2½ years above the national norm in language, arts, social studies, and the like.

Senator ROTH. I believe that is a very interesting point dealing with the cost effectiveness raised by Senator Moynihan.

One further question along the same lines. What accounts for the difference in costs between the public and private sector? Is the difference in pay, number of teachers per student, or physical facilities? Has any study been made of that?

Mr. SENSKE. I think there will be some more definitive information on that with the later panel, but we think in our situation one of the reasons is that we do not employ as many administrators, do not have that level of bureaucracy in our school system that you would find in some other systems.

I think another reason is one we are not too proud of, and that is we don't pay as high a salary to many of our teachers.

Senator ROTH. I would like to join in thanking this panel for its helpful testimony. The point that concerns me the most is what you have characterized as the freedom of choice, and it does bother me that it appears that, for many reasons, for the average family and those on the lower end of the economic scale there is no true freedom of choice under present costs.

Thank you, Mr. Chairman.

Senator PACKWOOD. Abe.

Senator RIBICOFF. I would like to make one comment.

First, looking at the four of us here, I would guess that we have always been in the forefront in aid to education—public education, elementary, secondary, and higher education. We all believe in public schools. I think we also all believe in diversity.

What bothers me the most is that the middle class is really the backbone of this country, and if we destroy the middle class in America, this Nation faces great, great problems. Our concerns rightfully are to do something for the poor, whether it is health or education or welfare. The four of us are deeply concerned about aiding the poor, and I think our voting records indicate that. Society is concerned about the poor, and rightfully so.

The rich can take care of themselves. They need not have concerns. But the middle class, self-respecting, paying their own bills, and proud, find themselves being pushed against the wall everywhere they turn. We have just added to their burdens with the increased social security taxes. These will be a great burden upon the middle-class wage earner.

I think society has an obligation, if it looks to the future strength of America, to make sure that we encourage middle-class philosophies and middle-class stability and middle-class survival. In the field of education the middle class finds themselves supporting public schools. They don't grumble about it. Their taxes on their homes and on their incomes go to support of public schools. But valuing diversity means we think that if they chose to send their children to a private or to a religious school they should have the right to do so. I think it is only fair that if we are saving the cost to the public purse of some $1,600 per pupil, that we should take into account the willingness of society to afford to a parent of a child in a private school a tax credit to pay for their share of the cost of education. This still saves a substantial amount of money for the public school and the general taxpayer.

Of course the problem always has been the constitutional question. I think out of a sense of fairness the bills offered by Senator Roth and Senator Moynihan and Senator Packwood are deserving of support. I think the Senate has consistently supported this position. The House has ducked the issue in the past. My feeling is that the time has come when we are going to have to face up to it in a conference on another tax bill soon. Yet we are responsible Senators and we are concerned with the constitutional barriers that have always been placed in the way of aid to private education.

So I do appreciate your testimony and I am sure that we will be listening with great interest to the arguments of Professor Valente and others so we can reach a conclusion.

My prediction is that one of these days a Supreme Court is going to allow the constitutionality of tax credits. I have always felt that the tax credit route is a constitutional route.

Senator MOYNIHAN. Just for the record, Mr. Chairman, the question was raised by Senator Roth about the relative achievement levels. We have a lot of data on that. In New York State, in 1975, statewide tests were given that set a certain reference point with respect to reading scores at ninth grade—68 percent of the public school students scored above the reference point; 84 percent of the nonpublic youngsters did.

These do not represent class differences. You really have to confront the amazing possibility that it may have something to do with the nature of the education.

Now we know that it can't have a lot to do, but it may just be they teach better. There is no evidence that they teach worse. And I think Senator Ribicoff has made a point which might be emphasized. If there is one thing the persons of low income in this country have to deal with it is State monopoly. It is the reality of the present time that in most large cities there are two school systems, one of which has a better record for teaching. But they can't get into those schools today, whereas under this legislation they could.

That is under this legislation, they can go to a Hebrew day school, they can go to a Missouri synod Lutheran school, they can go to Germantown Friends, they can go to Our Lady of Sorrow—it is an option and it is one which offers an alternative of the kind that you hope society would offer to people with respect to something that is very important to them.

Senator PACKWOOD. Bill?

Senator ROTH. No.

Senator PACKWOOD. Gentlemen, thank you very much.

Mr. LAMBORN. Thank you, sir.

Senator PACKWOOD. Our next witness is Professor Valente from Villanova. Are you here?

We will move on to Leo Pfeffer and take Professor Valente when he arrives.

[The prepared statements of the preceding panel follow, oral testimony continues on p. 85.]

STATEMENT OF ROBERT L. LAMBORN, EXECUTIVE DIRECTOR, COUNCIL FOR AMERICAN PRIVATE EDUCATION

The Council for American Private Education (CAPE) welcomes this opportunity to participate in these hearings on tuition tax relief bills set by the Subcommittee on Taxation and Debt Management Generally of the United States Senate Committee on Finance.

CAPE is a coalition of 14 national organizations serving private (nonpublic) schools at the preschool, elementary, and secondary levels—approximately 15,000 schools enrolling nearly 4.2 million schoolchildren. CAPE and its member organizations are nonprofit and support admissions policies which are nondisciminatory on the basis of race, color, and national origin. These organizations, by enrollment, represent some 85–90 percent of American private schools. CAPE's members are: The American Lutheran Church; American Montessori Society; Association of Military Colleges and Schools of the U.S.; Friends Council on Education; Lutheran Church—Missouri Synod; National Association of Episcopal Schools; National Association of Independent Schools; National Association of Private Schools for Exceptional Children; National Catholic Educational Association; National Society for Hebrew Day Schools (Orthodox Hebrew); National Union of Christian Schools; Seventh-day Adventist Board of Education; K–12; Solomon Schechter Day School Association (Conservative Hebrew); and the U.S. Catholic Conference.

The members of the Council see public and private schools as complementary public services agencies serving the public needs of a pluralistic society. Together, public and private schools provide alternative educational opportunities for the nation's children and make possible the exercise of parental choice in the education of their children. Each contributes to the strength and vitality of the other—and all to the vitality of the communities which they serve. It is sound public policy to enact legislation which serves to maintain a wide variety of educational options and to make those options available to families of as wide a socioeconomic range as possible. Tuition tax credit bills designed particularly to serve lower and middle-income families having members attending reputable educational institutions of all types on all levels clearly qualify as such legislation.

At these hearings and in separate written testimony, members of CAPE will comment upon the characteristics and concerns of the schools they serve or operate, and upon the significance of the tuition tax credit legislation under consideration from their perspectives. Others will testify on matters of economics, sociology, Constitutional law, and parental choice. The comments which follow deal with five general considerations: the extent and variety of the nation's private schools; the socioeconomic background of families having children in private schools; the position of private schools with regard to racial nondiscrimination; the role of private schools in American society; and the likelihood of "pass through" tuition increases. They will close with a brief discussion of three specific matters which should be clarified in the final drafting of any tuition tax credit legislation.

The extent and variety of the nation's private schools.—Latest available figures, published by the National Center for Education Statistics, indicate an estimated 49.1 million children attended elementary and secondary schools in the fall of 1976 and 9.8 percent (4.8 million) of them attended private schools. There were approximately 106,600 elementary and secondary schools; at conservative count, 17,950 (16.8%) were private. Significant additional numbers of children attended preschools operated under private auspices. In terms of purpose, size, administrative structure, and operational style, the private schools are markedly heterogeneous. While some have no church affiliation, the large majority are affiliated in one degree or another with some religious body.

A recent National Institute of Education study of private school enrollments, using 1975–76 figures, provides the information that the Catholic schools enroll about 75 percent of the private school students; that the Lutheran schools enroll about 5 percent; that Baptist, Calvinist, Episcopal, Hebrew, Quaker, and Seventh-day Adventist schools enroll significant numbers; and that there are a considerable number of other groups of church-related schools.

The socioeconomic background of families having children in private schools.—Bureau of Census figures provide a clear picture of the financial status of families having children in private schools. Of the families having children in private schools in 1975, 5 percent had gross annual incomes of $5,500 or under; 10 percent of $7,400 or under; 25 percent of $11,600 or under; 50 percent of $17,100 or under; and 75 percent of $21,150 or under. Other studies show substantial percentages of private school children in Elementary and Secondary Education Act Title I target districts. In major urban areas, which have large disadvantaged populations, high percentages of the total school-age populations attend private schools. The most recent figures available are for 1970–71, but they appear reasonably representative of the situation today: Boston (23.9%), Chicago (24.5%), Cleveland (32.2%), Milwaukee (26.1%), New Orleans (27.4%), New York (24.1%), Philadelphia (31.7%), and San Francisco (23.4%). Private schools have made a major commitment to serve these disadvantaged populations through the maintenance of inner-city schools and provision for scholarship aid at schools outside the inner city.

The position of private schools with regard to racial discrimination.—The vast majority of private schools actively support admissions policies which are nondiscriminatory on the basis of race, color, and national origin. The schools of the CAPE member organizations enroll between 85 and 90 percent of those attending private schools. All support racially nondiscriminatory admissions policies, as do many non-CAPE-member schools. Even among those schools which were organized in the late 1950's and early 1960's in response to the desegregation of the public schools, a substantial number have abandoned their original positions on race and adopted open admissions policies.

It is safe to say, therefore, that well over 90 percent of private school students attend schools which have racially nondiscriminatory admissions policies. Nearly 90% is assured by the CAPE membership alone and, given the requirements of Section 501(c)3 of the Internal Revenue Code, the percentage is necessarily at a substantially higher level. CAPE, acting for all of its members, participated in an amicus capacity at the Appeals and again at the Supreme Court level in support of the black parents in *Runyon* v. *McCrary*, a case decided in favor of the parents and against the private schools which were charged with discriminatory admissions practices. The black enrollment in private schools, at latest report at 6.4 percent of the total enrollment, has been steadily rising. Private schools in the inner cities serve large numbers of minority children; the scholarship grants made by private schools go in substantial part to minority representatives.

In discussing the position of private schools with regard to civil rights, a clear distinction must be made between, on one hand, considerations of race, color, and national origin and, on the other, religion. It is entirely appropriate—and not discriminatory in any pejorative sense—for religiously oriented institutions to make special efforts to serve families sharing their announced religious beliefs. While most private schools are, in fact, open to members of all faiths, discretionary preferential consideration of applicants and employees on the basis of religion is a proper exercise of First Amendment rights.

The role of private schools in American society.—Private schools have served American society since earliest colonial times, reflecting the felt needs of the people as those needs have changed through nearly 350 years of our history. Operating under "marketplace" forces, they have adapted to changing value orientations and to competitive pressures which have made certain that they were responsive to social needs. They have been created to satifsy the wishes of clientele groups and gone out of existence as they have failed to satisfy those wishes or as the groups themselves have gone out of existence. (Their present numbers and variety attest to the importance which people today place upon the services they render.) After a difficult ten-year period beginning in the middle 1960's, Catholic school enrollments for the last several years have paralleled those in the public schools; Protestant and Hebrew school enrollments have rather consistently increased, running against the national trend in the student population.

Ten percent of American families with school-age children elect to send their children to private schools, although in most cases they must do so after providing taxes to support the public schools. In the process, through tuitions and contributions, they—and those others who support private schools although they have no children in them—finance the education of one-tenth of the nation's schoolchildren out of private funds, relieving the general populace of this portion of the expense of the nation's schools. These private school expenses place a heavy financial burden on many lower and middle-income families in the easiest of times. In the present financial climate, the burden becomes close to unbearable for many. If these families are to have realistic educational options, if our pluralistic society is to benefit from the creative strengths inherent in a society of diverse ideological persuasions and experiential backgrounds, if our educational system is to benefit from the collaborative—and, to a constructive degrees competitive—efforts of strong public and private sectors, then it is important to find a mechanism which at least in part offsets the escalating financial burdens faced by those families which, if they could, would elect to have their children attend private schools of their choice. Tuition tax credit legislation provides a promising mechanism for advancing this purpose, particularly when it includes a "refund" provision for the benefit of the least affluent. (1)

The likelihood of "pass through" tuition increases.—Concern has been expressed that a tax credit will be seen by private school administrators as grounds for immediate and offsetting tuition increases. It is an understandable concern and one to which it is difficult to respond definitively. One, however, should recognize: that private schools must justify tuition increases to their patrons and have been chary, traditionally, of instituting them; that a tuition increase which offsets a tax benefit which is crucial in a family's decision as to whether or not they can afford a private school education is self-defeating; that a "pass through" might be expected to incur the displeasure of present and prospective school patrons; that such a decision would run counter to the current substantial efforts of schools to increase their accessibility to children of lower and middle-income families; and that such a "pass through" would be counter, also, to the long-standing church traditions of subsidizing church-related schools.

Three specific matters requiring clarification.—Three specific matters with regard to the tuition tax credit bills under consideration should be clarified in any fiscal legislation. All have to do with the definition of the tuitions which are covered. First, if "covered" tuitions are limited to those of schools "accredited or approved under state law," families having their children in many fully reputable schools will be barred—we understand unintentionally—from benefits. A number of states do not, under law, accredit or approve private schools. More appropriate wording to achieve the purposes of the legislation would be to this effect: "the school must be accredited, approved, or licensed under state law, or satisfy state attendance laws." Second, if it is intended to cover tuitions to schools providing special education—as we understand it is and as is clearly consistent with current national interest in providing for the handicapped—this intention should be made clear. And third, if it is intended to cover tuitions to preschools—as is clearly consistent with the current national concern with the care and nurture of the young in the face of evolving family patterns—this intention should be made clear.

Statement of Rabbi Bernard Goldenberg, Associate Director, Torah Umesorah, National Society for Hebrew Day Schools

Mr. Chairman and Members of the Senate, I have the honor to represent the National Society for Hebrew Day Schools—Torah Umesorah.

Our organization was founded in 1944, in order to foster the growth of Hebrew Day Schools in America offering a combined educational program of Hebrew and General studies. At present, there are 457 Hebrew Day Schools in the United States of which some 300 are elementary, while 150 are secondary schools. These schools are located in 170 cities in 37 states from coast to coast. The aggregate enrollment of these schools is about 83,000.

Our organization which was directly instrumental in founding most of these schools, services all the schools in the movement through the provision of administrative and teaching personnel, supervisory services, curricular programs, textbook materials, loans and grants, educational aids and literature. We also sponsor five (5) Teacher Training Institutes in New York, Baltimore, Chicago and Cleveland respectively, as well as a National Association of Hebrew Day School Principals and a National Association of Hebrew Day School P.T.A.'s. Our national body is acknowledged to be the representative agency of the Hebrew Day School in America and we ought to bear in mind as a sort of perspective that the first Hebrew Day School was started during the Colonial Period.

The Hebrew Day School has the objective of providing intensive instruction in both the area of secular, general education and that of religious education, and it seeks to accomplish both on highly exacting levels. It strives to inculcate in its pupils a rich knowledge and fervent love of their American heritage, a firm sense of civic responsibility and an enduring commitment to the pursuit of academic excellence in the sciences and the humanities, side by side with a high regard for ethical norms and abiding loyalty to the principles and percepts of the Jewish religious tradition. In essence, the Hebrew Day School is committed to the building of a synthesis between the values of Judaism and the best of American culture and a life style corresponding to that synthesis.

It should be noted also that while almost the entire movement is united in basic principle, the Hebrew Day Schools are most properly classified as private schools, since they are individually autonomous in operation. They are likewise maintained financially in part by payment of prescribed tuition fees, on the part of the parents of the pupils, and in part by voluntary contributions made by sympathetic individuals and groups. On the average, approximately 40% of the budgets are covered by tuition. The tuition rates are approximately $500–800 per year, but in the larger metropolitan communities, where the majority of these schools are found, a large percentage of the parents have very limited economic earnings, which makes them dependent on tuition grants should they wish to enroll their children in a Hebrew Day School. Since Day School parents consider both Day School religious instruction and the finest possible program of secular instruction as equally vital for their children, the economically underprivileged along with the middle class among them are faced by the agonizing choice of either failing to provide adequately for the religious education of their children, or of being driven into desperate financial straits when they seek to send their children to Hebrew Day Schools—whose standards are themselves jeopardized by inability to meet the constantly rising budgetary requirements imposed by the needs of our time.

Perhaps by concentrating our attention on a single area we can gain a better insight into the plight of the poor parents in the larger metropolitan areas along with the middle class who have chosen a nonpublic school for the public education of their children. In New York City 50 percent of the Jewish children attend Hebrew Day Schools. Nearly 120 of the 181 schools in this major city are located in poverty areas. With the educational institution such as the Hebrew Day School being the pivotal institution in the structure of the Jewish community—should it happen that Hebrew Day Schools in such areas will no longer be abile to provide scholarships for the children of the poor and the middle class—the whole community will then be threatened. For at such a point parents of Hebrew Day School students, finding no available viable educational institution in their community, will then have to relocate to another area for the sake of their children's education. In the wake of this you have an accelerated flight from the city, a further emptying of the inner city, and urban relocation with all its attendant evils. And all because of a lack of freedom of choice in education. Thus, years of investment of resources, will, perserveance and purpose will be crushed in record time because of the relocation of parents since the school is the pivot institution of the community. Such a decision deeply immersed in agony nullifies years of consecreated efforts and purposeful living. And what was once a colorful, polygot neighborhood with its ethnic nuances and integration becomes that no more. And all for want of understanding of the plight of the poor and middle class parent who opts for nonpublic school education.

With reference to the achievements of the Day Schools, the scholastic standards maintained by these schools throughout the country and the subsequent record of academic achievement of their graduates has been exemplary, and has won the enthusiastic approval of many public school educators as well. Amongst the graduates of Hebrew Day Schools, perhaps it should be mentioned, there are an impressive number of personalities who have won national and international renown in the professions, in academic and scientific endeavor, in the judiciary and in government service.

With reference to the General Studies Departments of the Day Schools, it should be noted that their curriculum is patterned after the course of study of the public schools, with much help and cooperation extended by local superintendents of schools. The teaching personnel in the General Studies Departments are often themselves public teachers, and are of widely varying religious backgrounds.

As parents, as Jews and as educators, deeply devoted to both education and educational excellence—we, therefore, feel that a rethinking on this problem of Federal aid to education—to all of education—is long overdue. Ours is an age when the pursuit of education is vested with an unparalleled urgency and yet we only pay lip service to this concept. For, how else, can we explain that in these urgent times we deny millions of children attending nonpublic schools responsible educational opportunities?

Let us state but one example. A research fellow at a university turning his nights into days so that we—all of us—can be cured of what is incurable—is not asked whether be obtained his initial school in biology or his motivation to serve humanity in a nonpublic school or public school. We ask only that G–d speed his efforts.

The nonpublic schools then served the state's and society's purpose. Let us ask ourselves, is America richer or poorer because of these young men and women who have received their education in nonpublic schools?

Let me also discuss another basic facet of democracy. Pluralism in education is the right to choose between educational alternatives without penalty. But if we are to have a pluralistic educational system, with all the good it implies, then such a system needs in some measuure the financial encouragement of the state. A financial penalty attached to the exercise of one's conscience is an infringement of free exercise. There is no freedom of choice in education if parents have to pay substantial costs for educating their children, while free schools beckon them.

That is why we are so strongly in favor of tax credit legislation. Inflation, galloping costs are wreaking havoc. The middle income group, too, is becoming disenfranchised.

Through tax credits some relief will be provided, constitutional purity is not invaded, and some viable options still maintained. Furthermore, such legislation includes all groups from elementary through college while also allowing for a tax refund.

There is still another issue through which we can view the need for such legislation. To the extent that the nonpublic sector can make a distinctive and invaluable contribution to general education in America by fostering their unique elements implicit in their theory and practice—it is a time for rejoicing. To the extent by which these schools do develop their own genius and thus become genuinely significant for all education in America—it will, again, be a time for rejoicing.

To the extent, however, that we do not preserve this distinctiveness in America, and turn our backs on alternatives to public school education it will then become a time of sorrow and a time of wailing.

For it is a matter of incalculable importance that such educational alternatives be preserved. Intellectual totalitarianism is not the fruit of the Founding Fathers seed. And the disappearance of educational alternatives is not the intent of the Founding Fathers Constitutional strictures.

In some cases our schools develop models for the benefits of all youth. In others they highlight a methodology or a procedure which can be shared by all. Some schools project a way by which they can and do teach love of learning. In others it will be the reaching out for the immeasurable value of high intellectual attainment.

The strength, therefore, of the nonpublic schools is not in their similarities to other schools, but in their differences. But this very difference is the preservative factor in the nation's survival.

The late Louis Marshall, in a brief amicus curiae in that very famous court case of Pierce vs. Society of Sisters had this to say: "The nation is no more preserved by the public school than it is by the other agencies. The Fathers of the Republic and a large proportion of our finest citizens never attended a public school, and today a large number of the best exemplars of Americanism have received and are receiving their education outside of public schools."

This was said in 1925. Today, in 1978, the basic issue is whether the nation is willing to preserve in some small measure other educational agencies along with the public schools—all of which play a role in the preservation of the nation.

It would seem that the decades ahead are geared to the concept of educational alternatives. Such alternatives should be keyed to the preservation of the nation—but, likewise the nation should be keyed to the preservation of the educational alternatives. One without the other is barren rhetoric. And barren rhetoric neither builds nor preserves.

Mr. Chairman, our thanks for this opportunity to share our thoughts with you.

STATEMENT OF DR. AL H. SENSKE, SECRETARY OF ELEMENTARY AND SECONDARY SCHOOLS, THE LUTHERAN CHURCH—MISSOURI SYNOD

Identification.—Mr. Chairman and Members of the Committee, I am Dr. Al H. Senske of The Lutheran Church—Missouri Synod. I appreciate this opportunity to testify in support of the Packwood-Moynihan tuition tax credit bill S. 2142. As a staff member of this church body's Board of Parish Education, I serve as Secretary of its system of elementary and secondary schools. We consider it a privilege and a blessing to be able to stand along side the public and other private school systems serving our Nation by providing its largest Protestant school system. Nearly 180,000 children are enrolled in the early childhood, elementary, and secondary schools operated by approximately 1,700 congregations of our church denomination. The Church's nation-wide system of colleges serve additional individuals.

Purpose.—These schools are born out of a religious commitment. They are not established out of opposition to public or other systems of education. These schools represent an effort to satisfy human needs in unique ways. The unique aspect of Lutheran education is that it includes the Christian faith and the Christian way of life in the educational process. Lutheran schools are based on the firm belief that for God to be at the center of one's life, He must also be made a vital part of the learning process. We strive valiantly to provide a quality education which includes moral and spiritual development.

Church support.—We are concerned that Lutheran and non-Lutheran parents who wish to avail themselves of such an education for their children, may, in fact, do so. These schools, located in nearly every state (and many foreign countries), are supported, for the most part, through contributions donated to the local parishes.

Parishes support their schools, first of all, because the schools serve as one way to carry out a specific ministry to people at the local level.

Secondly, the local congregations are also concerned that their schools are viable options to parents who are not able to pay tuitions and other fees that would be necessary to cover full educational costs. In some localities, groups of parishes (districts) contribute toward the operation of specific schools especially in poor rural and urban areas.

Even though the educational costs of most Luthern schools are constantly rising, they are still at a modest level when compared with the costs of some of the other school systems. The average per pupil cost at the early childhood-elementary level is approaching $700 per year. The secondary level costs are double that figure. High school tuitions cover 70 percent of the operating expenses, while only 25 percent of the elementary level costs are raised via tuitions. Most of the remaining costs, including capital costs, are acquired via donations.

Student body makeup.—Approximately 40 percent of the students are children of parents who are not members of the parishes which operate the schools. However, in most cases, members' children are given enrollment priority and usually pay a lower tuition, if any, than nonmembers.

One staff member at the national level serves as the director of multicultural Lutheran education. Considerable effort has been made to clarify the various nondiscriminatory rulings and government suggested procedures. These were and continue to be communicated extensively to all Lutheran schools in order that they may have clear guidelines regarding admissions and staffing policies and procedures. Those teachers of the Lutheran faith who are educated in the teacher education colleges maintained by the church are usually given preference because they are required to teach religion and to understand and live out in their classrooms the unique philosophy and purpose of these schools. The realization of the values of a culturally diverse faculty are urged and facilitated where possible.

Thirteen percent of the students at the elementary level are non-Caucasian (an increase of over 1 percent a year each of the last three years). The number of non-Caucasian pupils has increased 750 percent over the last 15 years. Nearly 20 percent of the secondary students are nonWhite (another statistic that grows annually). All of the schools of these congregations are tax exempt organizations and have adopted admission policies in accord with those recommended by the Office of Civil Rights and in keeping with the Civil Rights Act as suggested by the Internal Revenue Service. Schools are urged to seek accreditation and approval by the State Departments of Education where possible by law.

Significant efforts are made in communicating that Lutheran schools are open to the public, for the good of the public, and actually carry out the educational responsibility of the state, but under private auspices. None of these schools are proprietary schools. Thus they take a significant place with all other schools in the education of children for the common good of this land.

Parental makeup.—Tuition tax credits will help insure the possibility that more parents will have a viable choice of education for their children. It will also help relieve a portion of the financial challenge which many parents now face—that of helping support public and nonpublic schools. Most parents of children in Lutheran schools are in the middle and lower socio-economic levels. It does require financial sacrifice for many families to utilize Lutheran schools. This sacrifice takes the form of tuition and other fees as well as church contributions and public school taxes. There are often no grants available for middle class families resulting in difficult expenditures.

Many more parents are utilizing the Church's educational early childhood programs each year. For the sake of this significant number of parents, I regret that this bill does not allow for the payment of a tax credit for tuition paid for the education of children in those legitimate programs of education below the first grade level. It is, however, appreciated that the bill does allow for a broad class of beneficiaries—those paying tuitions toward higher education, secondary and elementary schools, for public and private programs. The bill is also to be commended for being a parental grant based on the child benefit theory, uncomplicated, of potential help to the poor, with no interference from the government, no entanglement, and no encroachment upon the varied and unique purposes of the various school systems.

Future tuition rates.—There is a fear on the part of some that if tax credits become available school tuitions will rise accordingly. Our experience has been that Lutheran schools charge and spend only that which is necessary. They base their charges on the costs which they incur while providing quality education programs. School tuitions will rise in the future because of inflation. Tuitions will also be forced to rise, as they have over the past number of years, because of the increasing difficulty of the local parish to fund the schools completely solely through the contributions of their parishioners. This has been especially true in the cities.

It is also possible that some parents who normally give generously to the church may ask their church schools to raise tuition rates. Higher tuitions may be requested in order that a higher percentage of the money utilized by the church for the school will be acquired in the form of tuition and less in the form of a donation. It would be to a parent's advantage to pay $500 toward tuition and receive a $250 tax credit than it would be to donate $500 to the church and school and receive a tax deduction of lesser worth.

In my opinion, Lutheran schools will not automatically raise tuitions substantially because of a tuition tax credit availability for parents.

Values of competition.—Public funds are utilized to support public education because of the value of education for the country as a whole, including far-reaching global benefits. Nonpublic schools are invaluable in the upgrading of humanity, of society. Usual arguments for private education includes the value of competition among the various educational systems, and the value of diversity and pluralism.

Mr. Justice Powell recently stated this opinion: "Parochial schools, quite apart from their sectarian purpose, have provided an educational alternative for mil-

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lions of young Americans; they often afford wholesome competition with our public schools; and in some States they relieve substantially the tax burden incident to the operation of public schools. The State has, moreover, a legitimate interest in facilitating education of the highest quality for all children within its boundaries, whatever school their parents have chosen for them."

We find there are also other values from nonpublic schools in which all citizens share. These values relate to serving the needs of children and youth, their parents, the communities, and the church.

Values to children and youth.—A universal need of children and youth is to learn to intelligently meet their needs and those of others. In order to do this they must become aware of their needs and understand them through proper exploration and education. Awareness is developed in Lutheran schools partly through the learning of basic theological insights which help pupils answer such questions as, Who am I? Why am I here? Who is God? Is man innately good or evil? How these questions are answered has a tremendous impact on a person's perceived and felt needs. Lutheran education helps students arrive at answers to these questions by examining them in the light of Scriptural truths. Such answers help children and youth explore life's needs in the most exacting and effective ways possible.

We are also concerned about how the needs of students interact and often come into conflict with those of others. For one person to interact effectively with another it is essential to develop proper skills and attitudes which can possibly affect the relationship. What constitutes right and wrong? What is law? What actions are ethical and moral? How are we to act when we are wronged by others? How does God react to us when we sin? The answers to these questions make a great difference in a young person's life-style.

Again, Lutheran education utilizes the Word of God as it attempts to help children find answers to these questions and guide their decisions. It is through the Law that they learn rules, and it is through the Gospel and the guidance of Christian educators that they learn of Christ's forgiveness and how to forgive others. The Scriptural concept of forgiveness is at the core of the Lutheran philosophy of education.

Since individuals cannot always handle their needs adequately or completely they realize that they not only need help from others but that others can also benefit from their assistance. Why should we help one another? What is the role of love? How does human help and love spring from Jesus' love? How does the Holy Spirit work in and through the Christian? What does it mean to be under the Law as well as under the Gospel? Correct answers to these questions determine much about the young person's quality and direction of life.

Lutheran education feels that sustaining and helping each other in love can only be learned from an understanding of the underserved love of Christ. Through such a process of education human beings are given dignity, concern, hope, and the desire to try.

All the citizens of our country are the benefactors from men and women who have had the opportunity to avail themselves of such an education during their childhood and youth.

Values to parents.—Most parents love their children and are concerned about these gifts of God. They are also concerned about the life-styles of their children. Education, peer groups, religion, and the home are some of the key factors which help mold life-styles, all crucial components of moral and spiritual development and thus important in the philosophy of Lutheran education.

Parents are responsible for the education and development of their children. God suggests in the Old and New Testaments that parents should discipline and instruct their children in the Lord, teach His words diligently to them, train them in the way they should go, and teach them how to observe His commands. There are numerous ways in which this can be done.

The availability of Lutheran schools, from early childhood through higher education, allows parents an educational choice that will help them carry out their parental responsibilities. The right, privilege, and opportunity of parents to choose a Lutheran school for their children actually gives people that great freedom of the free exercise of religion.

The Gallup Poll points out year after year that parents are concerned about quality of education, discipline, a voice in education, quality teachers, and other aspects. The structure and operation of Lutheran schools allows parental input and decision making. The theological positions of Lutheran teachers serve as a guide as they constantly strive for quality learning and teaching, for discipline, for personalized concern for each child, and for the way in which their pupils will live out their faith.

In these ways, Luthern schools serve parents and thus make significant contributions to the quality of life throughout this land.

Values to the community.—As Lutheran schools assume their role on the educational scene in their attempts to meet the needs of children and their parents, they are, in fact, also trying to meet the human needs of the local and global communities. The education of citizens who have a commitment to serve and love their fellow human beings is one of the greatest contributions any school system can make to a community.

Overwhelming evidence convinces us that many persons from our nation's communities recognize the value of such schools. As indicated before, educational diversity and choice are considered essential elements in America and must be preserved. In fact, this concept has been championed by Governors, Commissioners of Education, Presidents of the United States, and by many national and local leaders in public education. One of the latest groups to join in that expression is the Chief State School Officers.

The general public continues to grow in their understanding of nonpublic schools' contribution to the common good. Even people of the community who are nonconsumers of Luthern schools have publicly acknowledged that these schools do raise the quality of education, are examples of concern for children and parents and dedication toward the good of humanity, are committed to the religious values which many homes embrace, are spearheading a rebirth in moral and spiritual values, are staffed by committed teachers who care about children, and produce trustworthy and honorable Christian citizens.

We state with all boldness that it is to a community's advantage to have within it one or more Lutheran schools serving its parents and educating its citizenry.

Values to the church.—An argument against the Packwood-Moynihan tuition tax credit bill that will be raised by some of its opponents is that it will result in being of aid to the church. In truth, it will aid the work of the church, as does tax exemption, free police and fire protection. Similarly, medicare allows certain people to utilize a Lutheran hospital which is of aid to that hospital. Being of help to people, including those who are sick, is a portion of the work of the church. Thus what helps that Lutheran hospital is contributing toward the work of the church. The same point can be made for the many other social areas of work in which the church engages.

Whenever the church, or rather, the people of the church, make contact with other people, witnessing occurs. This happens not only through their deeds of justice and unselfish sharing, but also through their words of comfort, inspiration, and the verbalization of their spiritual faith. Through daily contacts the purposes of the church are also achieved and furthered.

The same is true of its schools. Lutheran schools are a significant aspect of the mission and ministry of the Lutheran church. These schools, like the church, provide opportunities for children to worship God, to learn more about God and about man, to witness to Christ, to develop a community through fellowship and a variety of relationships, and to be of service and help to one another. Research has shown conclusively that these goals of the schools are accomplished in significant degrees.

When the work of the church is furthered in this manner, certainly no one can construe it as an attempt toward the establishment of a state church. Making public aid available to parents who wish to capitalize on this type of education (of which they would still have to pay more than half of its costs), is a step toward making it possible for more parents to actually realize it as a viable option for their children.

Beyond good will.—It takes more than an acknowledgement of the values of nonpublic education to insure its accessibility to those who wish to utilize it. Chief Justice Burger made the point well when he wrote, "However sincere our collective protestation of the debt owed by the public generally to the parochial school systems, the wholesome diversity they engender will not survive on expressions of good will." He has also stated, "It is no more than simple equity to grant partial relief to parents who support the public schools they do not use."

It is my opinion that this bill will be found to be constitutional because the tax credits will be paid to parents allowing them to exercise more easily than heretofore their rightful freedom of educational choice. It will help preserve this strong and healthy system of private education that now exists and is acknowledged to be of tremendous public good.

Instead of threatening a basic liberty, as some opponents of the bill will claim, this legislation will, in fact, also strengthen and help insure the free exercise of religion.

It should not be difficult for people to comprehend how Lutheran school classrooms function as school and church simultaneously. We pray that all the people of this land will want to help insure that the many graduates of these elementary and secondary schools and colleges would emerge as mature citizens equipped to function in the local and world communities as humane individuals. The fact that many of them also emerg as dedicated Christians should not have to condemn them to various kinds of discrimination.

The passage of bill S. 2142 will result in a very large step toward a more true pluralism and a better understanding of the intent of the First Amendment.

A pledge.—Mr. Chairman, this concludes my formal statement. Much of what I have stated regarding Lutheran education I firmly believe is also true about many of the schools of other nonpublic systems. In cooperation with private and public education and with the help of God we are committed to a continuation of Lutheran education, while also pledging our support to that which will insure a quality education for all of America's people. Thank you for allowing me to present my views on behalf of Lutheran schools to the members of this Subcommittee.

SUMMARY OF TESTIMONY OF NATIONAL ASSOCIATION OF INDEPENDENT SCHOOLS

The National Association of Independent Schools, a voluntary 501(c)(3) membership association with roughly 800 member schools enrolling some 300,000 students supports the Tuition Tax Credit Act. Our statement makes the following points.

Private elementary and secondary schools, with a long history going back to earliest colonial days, have contributed and continue to contribute to the rich diversity of this country's educational resources.

We believe firmly in the established right of parents to choose the kind of education they want for their children.

The economic pressures of the times, with steadily rising costs and continuing inflation, are forcing higher tuitions and making it more and more difficult for parents of low and middle income to exercise their right of choice.

Broadening access to private schools is an objective to which we have long been committed as evidenced by the major efforts being made to maintain financial aid programs for those who cannot pay the full tuition. Last year some $43 million of financial aid was provided by our schools to about 30,000 students, funds derived entirely from the schools' resources. The Tuition Tax Credit Act would do much to extend assistance to low and middle income parents, both through the refundable feature and the tax credit.

Assistance flowing directly to the parent will preserve the independence of the institution from undue government regulation and ensure that the principle of accountability of the institution to its constituents will be maintained.

The established trend in higher education toward federal and state support for the student has proven to be sound. The Tuition Tax Credit Act would effectively extend it to elementary and secondary students and their parents.

Our statement deals in addition with several questions commonly raised about a tax credit program including impact on minority enrollment, the fear that tuition increases will negate tax credits, questions about the public benefit of private education, and the cost and educational effectiveness of private schools.

STATEMENT IN SUPPORT OF LEGISLATION PROVIDING TUITION TAX RELIEF FOR PARENTS OF CHILDREN ENROLLED IN PRIVATE ELEMENTARY AND SECONDARY SCHOOLS

The National Association of Independent Schools (NAIS) is the principal organization serving and representing independent elementary and secondary schools in the United States. Its membership is voluntary and comprises about 800 schools enrolling approximately 300,000 pupils and employing some 28,000 teachers. Membership is limited to institutions which subscribe to racially nondiscriminatory policies.

NAIS itself is a nonprofit organization and tax-exempt under section 501(c)(3) of the Internal Revenue Code, as are all but eight of its members. (This status has been required of new members since 1962, but there are eight proprietary schools which were members before that date and which have been allowed to retain membership.)

The member schools of the Association include elementary and secondary schools, day and boarding schools, coeducational and single sex schools, and schools of varying size. Their educational philosophies and styles embrace many different approaches from the conservative and traditional to the experimental. It is this quality of diversity which contributes to the richness of the fabric of our educational resources by providing a wide range of choice to parents seeking a particular kind of education. Freedom of choice for the parent and student and freedom to start and operate a school according to a particular educational philosophy have been characteristic and important elements of our educational history. Schools of the National Association of Independent Schools have founding dates going back to 1638 and represent almost every era of educational development in our history, including the immediate present, when new schools continue to be founded.

The principle that parents and students have a right to freedom of choice at all levels of education has withstood the test of time and constitutional tests as well. While the principle is under no constitutional threat at the present, it is under a powerful threat of economic pressure. Steadily rising costs necessitating higher tuitions are increasingly narrowing the availability of choice as a reality for the less affluent. The motivation to find a means to assist parents who could not otherwise afford it to exercise their right of choice at the elementary and secondary levels of education is the same as that which has given rise to the creation of student assistance programs on the part of both federal and state governments at the higher education level. Assistance to the college student to pursue his education at an institution of his own choosing has been determined to be sound public policy. It is only logical that it would be equally sound for students at the elementary and secondary levels.

We believe that the proposed Tuition Tax Credit Act is well designed to accomplish its purpose of helping parents to exercise choice in the education of their children and that its impact will be most effective for low and middle income groups for whom the burden of tuition is most severe. Our statement is issued primarily with that segment of the population in mind, and deals with several issues commonly raised when the subject of expanding access to private schools is under consideration.

One of the prevalent misconceptions about private schools is that their pupils come almost exclusively from families whose income would be classed as upper middle class. A more realistic picture is shown in the Census Bureau's Current Population Reports, dated October 1974, which reveal that over 50 percent of the children in the nation's private schools come from families with incomes under $15,000 and further, that there are more children in those schools from families in the $5,000–$10,000 bracket than from those in either the $20,000–$25,000 or the over-$25,000 categories. These figures provide substantial evidence that a large number of families are willing to make and are making financial sacrifices to send their children to private schools. In addition, they reflect the effort on the part of the schools to make themselves as available as possible to lower income groups within the limits of their existing resources. In the schools of the National Association of Independent Schools, for example, in the last year some $43 million in financial aid (7% of the annual operating budgets) was made available from the schools' own resources for the benefit of over 30,000 students. In the light of the figures above, it seems clear that legislation to provide some measure of tuition tax relief would benefit a broad cross section of the nation's population.

Although the parents of children enrolled in private schools—and not the private schools themselves—would be the principal beneficiaries of tax credit legislation, questions are frequently raised as to whether encouragement of private school patronage is in the public interest. One of the chief concerns has to do with minority enrollment and the impact—both actual and potential—which private schools have thereon. The concern grows out of the creation in recent years of a number of private schools whose avowed purpose was to avoid integration. It is important to stress that such a use of the private school is deplored by the vast majority of private schools, whose support of integration has been clear-cut and long standing. The Council for American Private Education, made up of 14 national organizations operating or serving private schools which enroll over 90 percent of the nation's private school population, admits only organizations which support nondiscriminatory policies. NAIS, one of the CAPE member organizations, has undertaken a variety of programs to assist its member schools in their own efforts to expand minority enrollment and has been keeping annual statistics for a number of years on minority enrollment.

Minority students in NAIS member schools today number some 19,000, about 7 percent of the enrollment, representing a steady rise from about 1.5 percent ten years ago. The amount of effort being put forth to maintain and increase this percentage is indicated by the fact that in a recent survey made of distribution of financial aid funds about 33 percent of the total funds applied went to the minority group. It seems logical to assume that the tuition tax credit bill under consideration, with its "refundable" provision for those whose tax liability would be less than the credit due them, would enable independent schools to broaden their efforts and would result in an increase in the percentage enrollment of minorities and others who need scholarship aid in order to attend these schools.

Another concern that has been expressed is that there might be a tendency on the part of school administrators simply to increase tuition by whatever amount the schools' patrons received through a tuition tax credit program. The rising costs referred to earlier have, of course, necessitated increases in tuitions in recent years, and assuming that costs will continue to rise given the inflationary pattern in which we seem to be bound, it would be foolish to say that tuitions are unlikely to rise in the future. But that is quite a different matter from suggesting that schools will automatically raise tuitions to match tax credits. Tuitions are raised only after the most exhaustive analysis on the part of boards of trustees, on which parents are generally represented, and with full recognition on the part of such boards of the potential adverse effect on the community and on the school. The school is, after all, accountable to its patrons, all of whom have a vested interest in keeping tuition rates as low as is consistent with the maintenance of the desired content and quality of the educational program.

Policies and trends with respect to the application of current scholarship funds provide additional assurance as to what might be expected in the event of a tuition tax credit program. Data compiled by NAIS from its members over a five-year period, beginning with the school session of 1971–72, show the following results (in round figures):

The amount of financial aid provided rose from $25 million to $43 million, an increase of 70 percent, and the percentage of such aid relative to total operating costs from 6 percent to 7 percent.

The number of students receiving aid rose from 21,000 to 30,000, an increase of 46 percent; the percentage of aided students from 12 percent to 15 percent; and the size of the average grant from $1,250 to $1,400.

These figures are especially impressive in the light of the fact that the years for which they were compiled were characterized by rapidly rising costs due to inflation, salary increases, and vastly larger expenditures for energy, and that the funds which made them possible were provided from the school's own resources and without state or federal aid of the sort available to institutions of higher education. The fact that these schools have been able, not only to maintain, but increase the levels of financial aid during a period of heavy financial pressures is strong evidence of their commitment to making the educational opportunities they represent as widely available as possible to less affluent families. Here again, as with the enrollment of minority students, it is a reasonable assumption that a tuition tax credit program would serve to enhance and broaden the schools' efforts to expand freedom of educational choice rather than to further inflate the educational economy.

This commitment is evidenced as well by the efforts of various groups of independent schools to provide educational benefits for students from less privileged social and economic sectors. Examples of such efforts are: the program called "A Better Chance" (ABC), which was initiated in 1964 and financed through the efforts of about 120 independent boarding schools across the country and which seeks out talented students from low-income families, provides full support for them in participating schools, and endeavors to prepare them for further studies at leading colleges and universities; the Educational Enrichment Program (EEP), which was initiated and supported by NAIS and a group of independent schools in the Boston area in collaboration with the Boston Public Schools, and which provides special summer programs for several hundred public school students, using independent school facilities and further assisting the pupils by follow-up programs on weekends and at other times during the regular session; and the SPHERE program in Hartford, which is similar to EEP and which has received some state and federal aid in addition to the private funds which have supported it from the beginning. There are also many educational programs which have been sponsored by individual schools for the benefit to their communities or for which the schools have lent their facilities and personnel.

Such programs are of direct and obvious public benefit and speak effectively to the question of whether public funds should be used to help parents send their children to private schools. A less obvious role of the independent school is that of providing some alternative to a public school system and thereby serving both as a yardstick and as competition for the latter. Replies from a recent survey of NAIS members revealed that more than 250 of them had programs within their curricula which could be described as experimental and/or experiential. Among these are programs in the arts, archeology, environmental studies, survival, foreign languages and cultures (including a number of indigenous to Africa and Asia); and some offering travel and study abroad, inter-racial and inter-cultural awareness, community service, urban problems, cooperative programs with neighboring public schools or colleges, etc.

It should be noted that the yardstick and competitor role works both ways. Independent schools benefit regularly from the innovative and experimental programs instituted by their public school counterparts, and the two sectors of elementary and secondary education may properly be described as complementary. Explicit recognition of and emphasis on this complementarity is the function of the National Network of Complementary Schools, a program embracing both public and private schools and sponsored by the Commission on Educational Issues, wherein students from Network schools are exchanged for periods of 4 to 8 weeks to share in programs in which the participating schools have special strengths—whether in some academic discipline, off-campus learning opportunities, or whatever. The Commission, incidentally, which was initiated by NAIS with a quasi-independent status, was brought into existence to encourage such collaboration between schools as well as to seek solutions to educational problems, to stimulate innovation, to share promising results thereof with the larger educational community, and to develop long-range planning procedures for independent schools.

Questions may be raised also regarding the cost and academic effectiveness of private schools as compared with public schools. There are no certain answers to these questions, since there are as many differences among private schools as among public ones, and cost per student in any given institution, public or private, will vary substantially with the nature and scope of the program offered. There is a general principle of accountability at work in the private sector which assures close attention to effectiveness. The voluntary nature of the enterprise brings with it a need to perform both educationally and financially in such a way as to continue to attract students. This is a powerful and ever-present incentive for effective performance. Failure to perform means institutional extinction. The provision of a tax credit limited to a portion of tuition, while of substantial benefit to the parent, will in no way remove the pressure for effective performance on the part of the institution which will still be subject to the choice of the parent who will be paying a substantial share of the bill and who will continue to be entirely free to go elsewhere when dissatisfied.

In conclusion, we believe that from its earliest days the nation has benefited from the existence of private schools as part of a rich tradition of pluralism and diversity and that it is essential that the right of parents to choose the kind of education they want for their children be maintained. We are concerned lest that right be substantially curtailed by the economic pressures which are threatening it. We believe the Tuition Tax Credit Act can do much to alleviate that pressure and we respectfully urge the Committee to give its approval to the proposed legislation.

Senator PACKWOOD. I might introduce Mr. Pfeffer by saying he is, I think, certainly one of the three or four great acknowledged experts in the field of constitutional law in the area of separation of church and state, and we are privileged to have you here, sir.

STATEMENT OF LEO PFEFFER, CHAIRMAN, DEPARTMENT OF POLITICAL SCIENCE AND PROFESSOR OF CONSTITUTIONAL LAW, LONG ISLAND UNIVERSITY

Mr. PFEFFER. My name is Leo Pfeffer. I am chairman of the department of political science and professor of constitutional law at Long Island University. The statement I submit today is, of course, my own and is in no way to be attributed to the university in whole or in part.

I am also special counsel of the American Jewish Congress, general counsel of the National Coalition for Public Education and Religious Liberty, and general counsel of the New York Committee for Public Education and Religious Liberty.[1]

I would guess the combined membership of all the organizations I speak for today is well over 20 million American citizens and probably closer to 50 million Americans.

These organizations have instructed me to inform this committee that they join in this statement and ask that it be accepted in their behalf as well as my own.

My statement deals exclusively with the constitutionality of S. 2142, the proposed Tuition Credit Act of 1977, commonly known as the Packwood-Moynihan bill.

The bill provides an income tax credit, subtracted directly from the amount of taxes owed, for tuition expenses paid by the taxpayer himself, his spouse, or his dependents. The amount of the credit is to be 50 percent of the tuition payments up to a total credit of $500 for each student. The credit is to be refundable, so that if the taxpayer is entitled to a credit greater than the amount of his tax liability, the difference is to be paid to him by the Government.

It is our view and that of those who join in this statement that insofar as the proposed law relates to tuition at elementary and secondary schools it is irremediably unconstitutional on its face. It is also our view that in respect to institutions at the college and university level it is likewise unconstitutional on its face, but that if it were modified along the lines I shall note it might pass constitutional muster, although this is by no means certain. This conclusion is based upon the relevant decisions of the Supreme Court relating to governmental aid to religious schools, including those decisions holding that the allowance of tax credits for tuition in such schools constitutes prohibited aid to the schools. It is to these decisions that I now address myself.

ELEMENTARY AND SECONDARY SCHOOLS

It may be assumed that, insofar as tax-raised funds are used by religious schools to provide health or welfare services such as furnishing medical and dental care or meals, no constitutional prohibition is violated. Such an appropriation would pass muster under the establishment clause, because, to use the oft-repeated language of the Supreme Court, it reflects a clearly secular legislative purpose and avoids governmental entanglement with religion. *Lemon* v. *Kurtzman*, 403 U.S. 602, 612–613 (1971).

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[1] Lists of the organizations affiliated with the national coalition and with the New York committee appear at end of statement.

The Court has also upheld the constitutionality of laws financing transportation to religious schools and the purchase of secular textbooks which are loaned to religious school pupils for use in their school studies. *Everson* v. *Board of Education*, 330 U.S. 1 (1947); *Board of Education* v. *Allen*, 392 U.S. 236 (1968). These two decisions were handed before the purpose-effect-entanglement principle was established by the Court, and a majority of the Court feels it inadvisable retroactively to invalidate such laws, even though it would be difficult to rationalize them under that test.

Beyond transportation and textbooks the Court has refused to go, as an examination of its decisions after *Allen* will show. Every legislative effort to channel tax-raised funds to elementary and secondary religious schools, directly or indirectly, has been held violative of the establishment clause.

In *Lemon* v. *Kurtzman*, *supra*, the Court invalidated a purchase-of-services statute financed out of the proceeds of horseracing.

In *Sanders* v. *Johnson*, 403 U.S. 955 (1971), it affirmed without opinion a district court decision (319 F. Supp. 421) holding unconstitutional a purchase-of-service statute financed out of the general treasury.

In *Earley* v. *DiCenso*, 403 U.S. 602 (1971), it held unconstitutional a salary supplement law.

In Committee for Public Education and Religious Liberty v. *Nyquist*, 413 U.S. 756 (1973), it ruled invalid a statute providing tuition payments for low-income families.

In *Sloan* v. *Lemon*, 413 U.S. 825 (1973), it invalidated a tuition reimbursement law.

In *Essex* v. *Wolman*, 409 U.S. 808 (1973), it affirmed without opinion a district court decision (342 F. Supp. 399) ruling unconstitutional a general tuition grants law.

In *Nyquist*, it struck down a law providing tax benefits for parents whose children attend parochial schools. We will consider this decision in more detail later.

In *Grit* v. *Wolman*, 413 U.S. 901 (1973), it affirmed without opinion a district court decision (353 F. Supp. 744) invalidating a law indistinguishable from S. 2142, providing tax credits for such parents.

In *Nyquist* it held unconstitutional statutory maintenance and repair grants to parochial schools.

In *Levitt* v. *Committee for Public Education and Religious Liberty*, 413 U.S. 472 (1973), it nullified statutory grants to pay for law-mandated services performed in parochial schools.

In *Brusca* v. *State Board of Education*, 405 U.S. 1050 (1972), it affirmed a decision (332 F. Supp. 275) holding that exclusion of parochial schools from tax funding of education did not violate any constitutional rights of parents sending their children to such schools.

In *Franchise Tax Board* v. *United Americans*, 419 U.S. 890 (1974), it affirmed a district court decision invalidating a statute providing tax reductions for parents of parochial school pupils.

In *Luetkemeyer* v. *Kaufmann*, 419 U.S. 888 (1974), it affirmed a decision upholding a Missouri law providing free transportation only to pupils attending public schools.

In *Marburger* v. *Public Funds for Public Schools*, 417 U.S. 961 (1974), it affirmed a district court decision (358 F. Supp. 29) holding unconstitutional on its face a New Jersey statute providing auxiliary services, instructional materials, and instructional equipment to private and parochial schools.

In *Meek* v. *Pittenger*, 421 U.S. 349 (1975), it invalidated, except in respect to the loan of textbooks, a statute providing for a variety of so-called auxiliary services "and such other secular, neutral, and nonideological services as are of benefit to nonpublic school children" and are provided for public school children.

In *Wolman* v. *Essex*, 421 U.S. 982 (1975), on the authority of the *Marburger* decision, it reversed and remanded a district court decision upholding the constitutionality of a law similar to that involved in *Marburger*.

In *Wolman* v. *Walter*, U.S. 97 S. Ct. 2593 (1977), it held unconstitutional provisions in a law designed to finance the purchase of instructional materials and equipment to be loaned to the pupils and parents of pupils in religious schools and to finance field trips and visits "to governmental, industrial, cultural and scientific centers designed to enrich the secular studies of students."

Finally, as recently as December 6, 1977, the Court, in *New York* v. *Cathedral Academy*, U.S. 98 S. Ct. 340, held unconstitutional a law seeking to reimburse nonpublic schools for the expenses incurred by them in providing State-mandated services for the remainder of the school year in which *Levitt* v. *Committee for Public Education and Religious Liberty*, was decided.

Senator PACKWOOD. Let me remind you we are holding the statements in chief to 10 minutes so we have ample time for questions.

Mr. PFEFFER. I am sorry. I assumed that as I was invited by the committee and didn't come down on my own, I would be permitted to deliver my statement.

Senator PACKWOOD. Most of the witnesses were invited by the committee that appear here. We have many more witnesses.

Mr. PFEFFER. I have exhausted my 10 minutes. I just have to say I am the first witness to testify on the other side. I represent, as I indicated, I believe——

Senator PACKWOOD. I want to say you are not the last, however.

Mr. PFEFFER. Very well. I will conclude my statement. Thank you very much.

Senator PACKWOOD. Would you respond to questions?

Mr. PFEFFER. I don't know whether it is worthwhile. I feel hurt. I feel the cause I represent is hurt. We have heard all from the other side. There are 50 million, at least 50 million Americans who agree with the position I present. I think it is unfair and improper for the committee to hold me to 10 minutes without indicating that when I was invited by the committee to come down, at my own expense, or the expense of the organization, without telling me I would only be allowed to speak for 10 minutes.

I will leave it to the committee itself and to others to judge whether this is fair treatment or not.

Senator PACKWOOD. Let me say if you were not advised I will allow you to continue.

Mr. PFEFFER. I was not advised.

Senator **Packwood**. It is our mistake. We try to advise all witnesses ahead of time we enter their statements in the record and limit them to 10 minutes.

Mr. **Pfeffer**. May I submit for the record a letter signed by you and Senator Moynihan which doesn't in any way indicate I would be limited, not one word?

Senator **Packwood**. I will be happy to take your word for it, you were not notified, and it is our mistake.

You go ahead and finish, as long as you will stay for an extensive period for questions.

Mr. **Pfeffer**. I will stay as long as necessary.

I go now to tax credits. As I have noted, the constitutionality of according tax credits or benefits to parents of pupils in religious schools was passed upon by the Supreme Court in the *Nyquist* case. Under the New York law there involved, parents were permitted to subtract from their adjusted gross income for State income tax purposes a designated amount for each child for whom they paid at least $50 tuition.

If a parent's adjusted gross income was less than $9,000 he could subtract $1,000 for each of up to three children attending nonpublic school. The higher the income, the lower the subtraction; if the income exceeded $25,000, no subtraction was allowed. As worked out by the legislative leaders, a parent of three children in nonpublic schools would receive a tax benefit of $150—$50 for each child—if his income was less than $9,000, and proportionately lower amounts if his income exceeded $9,000.

Though called "deductions," the benefits were not deductions in the usual sense. Ordinarily, one who makes a contribution to a charity can deduct the amount from his gross income and pay taxes on the balance. Thus, if a parent of three children with an income of $9,000 paid $150 in tuition for them, he could deduct—if tuition payments were tax deductible—$150 from his income and pay his tax on the remaining $8,850. Under the New York law he could deduct $3,000 and pay his tax on $6,000, and he could do so even if he did not itemize his deductions but took the standard deduction available to all taxpayers. What the State did was simply to figure out for each eligible taxpayer what he has to deduct in his tax return in order to effectuate the tax credit intended by the legislature.

The Supreme Court could not see any basic difference between tuition reimbursements—which it held unconstitutional in the same decision—and tax credits, nor between the latter and the type of benefits provided in the New York law. All three types had the effect of advancing religion, whether the tuition grant, the credit, or the benefit covered all or only part of the tuition; and all, said the Court, were equally unconstitutional.

To make sure that there was no mistake as to what it meant, the Court at the same time, in the case of *Grit* v. *Wolman*, affirmed without opinion the decision of a Federal court in Ohio declaring unconstitutional that State's usual type of tax credit for parochial school tuition, that is, the type involved in the Packwood-Moynihan bill. And the following year, in the case of *Franchise Tax Board* v. *United Ameri-*

cans, it affirmed a decision invalidating a statute providing tax reductions for parents of pupils attending religious schools.

I interpolate something at this point that lower Federal courts have reached the same conclusion.

I should like to read just one paragraph from a decision of the U.S. District Court in Louisiana from the case of Seegars against Traigle. It reads as follows:

> The Collector of Revenue has stated to the court that he has examined the Nyquist decision with care, has compared the language and effect of the New York State tax credit law with the Louisiana tax credit law here at issue. With commendable candor he states there is no significant difference between the New York and Louisiana statutes insofar as their substance and intents were concerned.
>
> That is correct. Therefore, we cannot narrowly now subvert the Nyquist decision.

Now a word on colleges and universities.

Insofar as S. 2142 relates to income tax credits for tuition paid to colleges and universities, the question of constitutionality becomes somewhat more difficult. For myself, I would find no constitutional distinction between tuition at the elementary and secondary school level and at the college and university level, any more than I would find a distinction between financing of transportation and textbooks on the one hand and all other educational expenses on the other.

The Supreme Court, however, has found such distinctions, and I think that the Congress has the right to enact laws which are not clearly unconstitutional no less than it has the obligation not to enact laws which are.

The difficulty of predicting with assurance how the Supreme Court would decide upon the constitutionality of the Packwood-Moynihan bill if it were limited to the college and university level rests upon the fact that there are only three cases involving such institutions which the Court disposed of by written opinions, and in two of them it could not muster a majority for any one opinion. (In *Horace Mann League* v. *Maryland Board of Public Works*, 385 U.S. 97 (1966), the Court denied a petition for certiorari to review a Maryland decision invalidating grants to three sectarian colleges.)

In the first of these, *Tilton* v. *Richardson*, 403 U.S. 672 (1971), the Court was called upon to pass upon the constitutionality of the Federal Higher Education Facilities Act of 1973 insofar as it applied to church-related colleges and universities. While most of the challenged statute was adjudged constitutional, only four of the Justices could agree in an opinion. The purality disinguished between lower and higher institutions of learning primarily on the ground that, in the words of the Chief Justice's opinion for the plurality, "college students are less impressionable and less susceptible to religious indoctrination."

In *Hunt* v. *McNair*, 413 U.S. 734 (1973), the Court upheld application to a Baptist controlled college of a State plan under which colleges could borrow money at a rate of interest lower than that available to others.

Finally, in *Roemer* v. *Maryland Board of Public Works*, 426 U.S. 736 (1976), only three Justices could concur in an opinion supporting a judgment upholding application of a grant statute to church-related colleges which performed essentially secular educational functions.

On the assumption that the position of the Court on aid to church-related colleges and universities can be gleaned from the multitude of opinions in these three cases, and on the further assumption—which, I believe, has been established—that there is no establishment clause distinction between grants and tax credits, it is my opinion that S. 2142 is unconstitutional as it now reads, but perhaps could be rendered constitutional if it were limited to tuition at colleges and universities including those which, though church-related, are not theological seminaries, perform essentially secular educational functions, do not require participation or attendance in religious courses, and do not discriminate, whether before or after admission, on the basis of religion.

Thus, while a required course in theology, objectively taught, would not disqualify an institution, compulsory attendance at religious services would. See, *Anderson* v. *Laird*, 466 F. 2d 283, certiorari denied 403 U.S. 1076 (1972).

III Enactment of Unconstitutional Measures. In what I have said heretofore I have presented not only my position but also that of the organizations which join in this statement. What follows have been concurred in by the American Jewish Congress and the New York Committee for Public Education and Religious Freedom. It has as yet not been concurred in by the National coalition and, therefore, in that respect I cannot say it speaks for the National coalition.

Senator Packwood, in his statement on September 26, 1977, did not refer to the constitutional issue to which I have addressed myself, but Senator Moynihan in his statement of the same date, did. I trust I am not speaking presumptuously if I suggest that he merits commendation for his honesty and frankness in conceding that under the present decisions of the Supreme Court the proposed Tuition Tax Credit Act is unconstitutional insofar as it encompasses religious educational institutions.

Senator Moynihan, however, is firmly convinced that the Supreme Court is wrong and that the measure is constitutional, although he does not "predict the Court tomorrow would hold it so." Why then does he cosponsor this measure? Because he is convinced that a future majority of the Court will see the true light and overrule its earlier decisions. If the majority of the Congress shares that conviction, that fact, in his opinion, justifies adoption of the measure.

For better or for worse, under the present system ultimate responsibility for interpreting the Constitution rests with the Supreme Court, and that has been the case since Marbury against Madison, a century and three-quarters ago. Those who disagree with a particular decision of the Court can resort to constitutional amendment to overrule it, and that has been done more than once in our history.

What, it seems to me, they may not do is to disregard the decision and proceed as if it had never been handed down or as if it had already been overruled by the Court itself (something which has happened quite often and could happen here too). When such a path is followed by the Congress it is particularly unfortunate, for each of its members does take an oath to support the Constitution, which means the Constitution is now interpreted by the Supreme Court.

It is pertinent to note Immanuel Kant's first categorical imperative: "Act only on a maxim by which you can will that it, at the same time, should become a general law." (The Philosophy of Kant, ed. Carl J. Friedrich (1949)). What would happen if every Congress and every citizen were simply to disregard any Supreme Court decision they believe to be erroneous? The consequence would be that the supreme law of the land would be no law but merely an expression of opinion to be accepted or rejected as one's inclinations dictate.

This is not an unreal fear. Within our own years we have experienced the tragedy of defiance in some communities of the Supreme Court's decisions declaring racial segregation in the public schools to be unconstitutional. I have no doubt that those who so acted were as sincerely convinced of the incorrectness of *Brown* versus *Board of Education* as the sponsors of the tuition tax credit bill are convinced of the incorrectness of the decisions to which I have referred in my statement. So long as the avenue of constitutional amendment is open I believe it would be wrong for Congres to enact the proposed measure simply because it thinks the decisions are erroneous.

Within the past decade a dozen States, beginning with New York in 1967, have considered amendments to their own constitutions seeking to relax bans on aid to religious schools. In each of these instances the voters to whom the proposal was submitted for approvel rejected it. In only one instance was a proposal relating to aid in religious schools adopted by the people. That one, unlike the others, was not initiated by the legislature but by a petition of voters. Its purpose, again unlike all the others, was to strengthen rather than weaken the constitutional restrictions on aid to religious schools. This occurred in the State of Michigan, and the people of that State voted to adopt the amendment.

I have little doubt that if an amendment to nullify the decisions to which I have referred in my statement were presented to the people of the United States it would be decisively defeated. That fact, I suggest, impels rejection rather than enactment of the measure now being considered by this committee. But even if I am wrong, the integrity of our constitutional system requires that amendment be the road that is taken. There can be no justification for seeking to achieve unconstitutionally what can be achieved constitutionally.

May I add one last thought. Suppose I am wrong and the 43 Senators who are cosponsoring this measure are right, that is, that the measure is constitutional or soon will be held so by the Supreme Court. The consequences can be disastrous.

The bill as now written applies to educational institutions from kindergarten through university, and to public as well as private institutions. Nothing in it prevents the institutions from increasing their tuition charges by $500 per student, and I do not suppose that there is anyone who doubts that that will happen. Nor is there anything in the measure which forbids institutions which are now free to students from imposing tuition fees, thereby availing themselves of the benefits of the measure.

This is a game any school system can play. What is there to prevent any or every public educational institution in the Nation—State, municipal, or county—from imposing a tuition fee of $500 per student, from kindergarten through secondary schools? There are approximately 45 million students in these schools. Multiply $500 by this number, and you get an annual sum of close to $16 billion. Add this to the $4.7 billion that the sponsors of the measure estimate it will cost under the present educational system, and we have an annual addition to our national budget of over $20 billion a year.

Thus, the implications of S. 2142 are much broader than the sponsors have stated. If enacted, it would make a first large step toward federalization of public education.

Nor will it help to amend the Packwood-Moynihan bill so as to limit it to private educational institutions. There is nothing to prevent States from divorcing all of their elementary and secondary public schools and make them private. If lawyers can avail themselves of tax benefits by making themselves private corporations, why cannot school districts do the same thing?

The experiment has been tried in a different context. In *Griffin* v. *Board of Education of Prince Edward County*, 377 U.S. 218 (1964), the Supreme Court held that a school district could not evade the constitutional barrier against racial segregation in public schools by making their schools private. But if the proponents of S. 2142 are right, there is here no constitutional barrier, in terms of the first amendment, to be evaded. At most, what you will have is tax avoidance, which is a good old American game, universally enjoyed. I respectfully suggest that the sponsors of S. 2142 reconsider their proposal in the light of this possibility.

Thank you.

[The appendix to Mr. Pfeffer's statement follows:]

APPENDIX I

ORGANIZATIONS AFFILIATED WITH NATIONAL COALITION FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

American Association of School Administrators;
American Ethical Union;
American Humanist Association;
American Jewish Congress;
Americans United for Separation of Church and State;
Baptist Joint Committee on Public Affairs;
Board of Church and Society of the United Methodist Church;
Central Conference of American Rabbis;
Illinois Committee for Public Education and Religious Liberty (PEARL);
Missouri Baptist Christian Life Commission;
Missouri PEARL;
New York PEARL;
Monroe County, New York PEARL;
Nassau-Suffolk PEARL;
Michigan Council Against Parochiaid;
National Association of Laity;
National Council of Jewish Women;
National Education Association;
National Women's Conference, American Ethical Union;
Preserve Our Public Schools;
Public Funds for Public Schools of New Jersey;
New York State United Teachers;
Ohio Free Schools Association;
Union of American Hebrew Congregations; and
Unitarian Universalist Association.

APPENDIX II

ORGANIZATIONS AFFILIATED WITH NEW YORK COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

American Ethical Union;
Americans for Democratic Action;
Americans for Public Schools;
American Jewish Committee, New York Chapter;
American Jewish Congress; A
A. Philip Randolph Institute;
Association of Reform Rabbis of New York and Vicinity;
B'nai B'rith;
Citizens Union of the City of New York;
City Club of New York;
Community Service Society, Committee on Public Affairs;
Council of Churches of the City of New York;
Episcopal Diocese of L. I., Department of Christian Social Relations;
Humanist Society of Greater New York;
Jewish Reconstructionist Foundation;
Jewish War Veterans, New York Department;
League for Industrial Democracy, New York Chapter;
National Council of Jewish Women;
National Women's Conference of American Ethical Union;
New York Civil Liberties Union;
New York Jewish Labor Committee;
New York State Americans United for Separation of Church and State;
New York State Council of Churches;
New York State Federation of Reform Synagogues;
State Congress of Parents and Teachers, New York City District;
Union of American Hebrew Congregations, New York State Council;
Untarian-Universalist Ministers Association of Metropolitan New York;
United Community Centers;
United Federation of Teachers;
United Parents Associations;
United Synagogue of America, New York Metropolitan Region; and
Women's City Club of New York; and Workmen's Circle, New York Division.

MISSOURI COALITION FOR
PUBLIC EDUCATION AND RELIGIOUS LIBERTY,
Jefferson City, Mo., January 15, 1978.

Re Hearing on S. 2142 (Packwood-Moynihan Tax Credit Proposal).

Mr. LEO PFEFFER,
National PEARL,
Washington, D.C.

DEAR MR. PFEFFER: I would be most grateful if you would represent me and Missouri PEARL at the hearing on S. 2142 conducted by the Subcommittee on Taxation and Debt Management of the Senate Finance Committee. I have read and fundamentally agree with the testimony which you have prepared in your own behalf. Our organization would like to be represented in the same basic manner.

If you can present this letter to the Subcommittee for the record, I shall be grateful.

In addition to what you have prepared, I would suggest the following:

First, in *Flast* v. *Cohen*, 392 U.S. 83, 105 (1968), the U.S. Supreme Court held that "the Establishment Clause of the First Amendment does specifically limit the taxing and spending power conferred by Art. I, § 8" of the U.S. Constitution.

Second, in *Nyquist*, 93 S. Ct., at 2974–5, the U.S. Supreme Court saw no discernible constitutional difference between paying a person a tuition reimbursement from the public treasury, on the one hand, and giving a person a deduction or credit against his tax liability for tuition purposes, on the other hand. The effect of both transactions is the same; they encourage students to send their children to nonpublic schools, and the financial aid represents a charge upon the public treasury for the purpose of religious education.

Third, some of us who are vitally interested in perpetuating the religious character and liberty of denominational schools, just as we are interested in upholding the No Establishment Clause of the First Amendment, are deeply concerned about the erosive effect of public aid, directly or indirectly, on church-related schools. We don't think that Government can tax everyone to assist such schools without putting some strings on the aid which it offers. Public accountability requires such strings. But—the nature of those constitutionally-necessary strings concern us.

In numerous decisions the U.S. Supreme Court has made it plain that, with respect to aid of private education (whether at the elementary-secondary level or at the higher level), public aid can assist only what is secular, neutral, or non-ideological with respect to religion.

We fear the impact of the secular-neutral-nonideological principle on denominational schools. Under the force of this principle, religious character, commitment, or activity of denominational schools can only diminish or disappear, or be inherently vitiated, in respect to church-related schools which are dependent, in whole or in part, on the public treasury for economic survival.

The adverse effect of the Packwood-Moynihan plan on viable religion in denominational schools, while probably not intended by sponsors or supporters, is something to be feared.

As a church historian by training and vocation, I have read much about the diminishing place of religion in denominational colleges since the U.S. Supreme Court's rulings in *Tilton* and *Hunt*. Less than two years ago, for example, HEW ordered a Baptist college to eject certain professors from a Federally-assisted building because they advocated religion from a sectarian position.

It is very disquieting to think that the Federal Government, by virtue of its power to tax and spend, is being put in the position to decide what kind of religion can be aided at expense to the public treasury and what kind can't.

Thanking you for your good offices in this matter, I am

Most cordially yours,

HUGH WAMBLE,
President, Missouri PEARL.

Senator PACKWOOD. On page 11 you posit the possibility all the public and primary and secondary schools will take advantage of the tax credit and substantially balloon the cost. Although they would obviously not all do it, if they did it as an alternative to raising their real property taxes, and in the long run it would cost the taxpayers no more, they would simply pay it in a different form. If they did that you estimated an additional $16 billion annual cost.

Would that make the bill constitutional?

Mr. PFEFFER. No; I think the bill is unconstitutional irrespective.

Senator PACKWOOD. If the public schools were to do that, which does it violate, then, the secular purpose, the primary effect, or entanglement? The secular purpose is clear, the Court has not yet struck down any secular purpose. The primary effect, if the public school does this overwhelmingly in support of public education and very, very secondary, tertiary in support of parochial schools, entanglement is minimal.

Mr. PFEFFER. I believe that the statute as it now reads is unconstitutional. It is quite possible—I don't want to prejudice that—that if it were amended along the lines I suggest, that is, that it includes all elementary and secondary schools——

Senator PACKWOOD. Public and private?

Mr. PFEFFER. Public and private.

Senator PACKWOOD. The bill does include that as drafted.

Mr. PFEFFER. And if it imposed the restrictions on religious entanglement which the Supreme Court has handed down in all the decisions which I have read to you, it would have a better chance of passing constitutional muster. It would still involve the third element of the three-part test. It would fail.

Senator **Packwood**. That is entanglement?

Mr. **Pfeffer**. I am afraid so. That is obvious, I predicated——

Senator **Packwood**. Why on earth——

Mr. **Pfeffer**. On decisions of the U.S. Supreme Court.

Senator **Packwood**. Why on earth is it constitutional to make a contribution to a church and then run a school with the money but you could not make a contribution to the church school?

Mr. **Pfeffer**. Why is it possible to make a contribution to a——

Senator **Packwood**. To a church, which is a deduction, and why does that not violate the establishment or entanglement clause?

Mr. **Pfeffer**. I think it does. The Supreme Court disagrees with me. The Supreme Court has, however, in its decisions in New York in 1970 carefully indicated that there is a constitutional distinction between a contribution to a religious institution as deductible and from a type of tax benefit which is involved in the statute. In my personal opinion I would agree with you. I think the other one unconstitutional.

Senator **Packwood**. You think the deductible is unconstitutional though you agree the Court doesn't agree on that?

Mr. **Pfeffer**. Well, that is incorrectly put. I think the Court would hold it constitutional though I don't agree on that.

Senator **Packwood**. Say that again.

Mr. **Pfeffer**. The Supreme Court——

Senator **Packwood**. Says it is constitutional.

Mr. **Pfeffer**. And until the Supreme Court overrules itself or until a constitutional amendment is put through, which has been the case in other instances, under *Marbury* against *Madison* it is the law of the land and should be complied with by the Senate of the United States and Congress of the United States as well as every citizen of the United States.

Senator **Packwood**. I am curious, have you ever been in a parish church where they say we are going to pass the basket the second time because the parish school needs something, and they pass it and collect something for the school?

Mr. **Pfeffer**. No; I have never been there.

Senator **Packwood**. Well, take my word for it, it happens, and in the church you are collecting money for the private parochial school and that is apparently constitutional.

Mr. **Pfeffer**. To collect money for public schools?

Senator **Packwood**. No; we are talking about church on Sunday, and we take up a special collection for the school that the church runs in its parish because it is badly in need of repair, and so the parishioners put in an additional contribution for the school that apparently is constitutional.

Mr. **Pfeffer**. I would go much further on that. To prohibit it would be clearly unconstitutional.

Senator **Packwood**. So it is alright in the church to drop a dollar in the basket for support of the school; it is not all right to go outside the church and drop a dollar in the basket that goes directly to the school?

Mr. **Pfeffer**. There is a tremendous constitutional difference. One is a voluntary payment, the other is a payment which is enforced by the penal sanctions of a tax law.

Senator Packwood. You lose me there. They are both voluntary contributions?

Mr. Pfeffer. Raising money and using it for parochial schools is a voluntary contribution.

Senator Packwood. Maybe I am not asking the question——

Mr. Pfeffer. Maybe I don't understand it.

Senator Packwood. I will try again.

You go into the church——

Mr. Pfeffer. Yes, sir.

Senator Packwood. The parish has a school, which the church is responsible for.

Mr. Pfeffer. That is right.

Senator Packwood. And from time to time, I have seen this happen, the church will take up a special collection in the church for the school on Sunday.

Mr. Pfeffer. Yes, sir.

Senator Packwood. They will say this is for the school.

Mr. Pfeffer. Yes.

Senator Packwood. You are saying that is constitutional?

Mr. Pfeffer. Yes, indeed.

Senator Packwood. Why?

Mr. Pfeffer. The Supreme Court has so ruled. If I were the Supreme Court I would have not so ruled.

Senator Packwood. You very clearly in your statement indicated we should at least follow what the Supreme Court has said?

Mr. Pfeffer. Yes, sir.

Senator Packwood. Regardless of our personal opinions?

Mr. Pfeffer. Yes, sir.

Senator Packwood. Your or mine?

Mr. Pfeffer. Yes.

Senator Packwood. That is constitutional?

Mr. Pfeffer. It is indeed.

Senator Packwood. Why is it unconstitutional to walk out of the church door and stand on the sidewalk and drop a dollar in the basket for the support of the church school although it doesn't go through the church, it goes directly to the school?

Mr. Pfeffer. Nothing forbids that in the——

Senator Packwood. Say that again.

Mr. Pfeffer. Nothing in the Constitution as I know it forbids it. Any law which would forbid that, I believe would be a violation of free exercise of religion.

Senator Packwood. If we were to change the tax credit simply to a contribution to the church school that would be constitutional?

Mr. Pfeffer. I don't believe the Congress of the United States has the power to enact laws which either request, desire, encourage, or compel contributions to church schools.

Senator Packwood. And allow a deduction for it?

Mr. Pfeffer. Now you are treading on constitutional grounds.

Senator Packwood. If I didn't preface my prior question by deduction, I assume that you assumed it.

You drop the dollar in the church basket and you are allowed to take a deduction of your income tax.

Mr. Pfeffer. If you make a contribution, yes.

Senator **Packwood**. And the fact you make a contribution as the basket goes by the second time for the church school you still take it off your income tax?

Mr. **Pfeffer**. Yes.

Senator **Packwood**. That is constitutional?

Mr. **Pfeffer**. Yes, sir, indeed.

Senator **Packwood**. But you could not go outside the church and make a dollar contribution to the school directly?

Mr. **Pfeffer**. Of course you can.

Senator **Packwood**. And take a deduction?

Mr. **Pfeffer**. Yes, you can under present constitutional law. What you can do—what Congress can do—is to pass a law taking a taxpayer's money from those who do not want to make a contribution to a church school and send it to a church school. I don't voluntarily pay my tax, maybe others do, they compel me to pay.

Senator **Packwood**. All you are saying, I think, possibly the refundable part of our bill is constitutional?

Mr. **Pfeffer**. Which?

Senator **Packwood**. The refundable part.

Mr. **Pfeffer**. No, no, I think it is all unconstitutional, at least under decisions of the Supreme Court which have not indicated that it would make any difference.

Senator **Packwood**. I want to run it by again. Why can you do indirectly through a contribution to the church for which you take a deduction off your income tax, what you cannot do directly?

Mr. **Pfeffer**. My only answer to that is that the question should not be put to me because I agree with you; put it to the Supreme Court. The Supreme Court has made that distinction. It has made a distinction. Maybe I haven't made myself clear. The Supreme Court has made a distinction between the tax deductibility of a contribution to churches and the using of tax-raised funds to finance church schools. Those decisions I have cited to you and if you have any quarrel with their logic the quarrel should be taken up with the Supreme Court and not with me.

Senator **Packwood**. I want to make sure I understand the logic. They make the distinction between a deduction which you took off the income tax and an appropriation from the Government for the support of the church school?

Mr. **Pfeffer**. Yes, a deduction from your income tax which you voluntarily make and a payment by the Government of tax funds paid by atheists and persons of different religions to be applied to finance religious schools which I said many of them cannot enter if they want to because they do not pass the necessary religious test of belonging to that particular religion.

Senator **Packwood**. In your opinion, it would be constitutional to pass a law allowing a deduction by an individual from his or her income tax for a contribution to a sectarian school?

Mr. **Pfeffer** As a charity?

Senator **Packwood**. Yes.

Mr. **Pfeffer**. I think under the present decisions of the Supreme Court that would probably be allowed. I think so.

Senator **Packwood**. I have no other questions.

Senator **Moynihan**. Thank you, Mr. Chairman.

First, just to have the record clear on what it was I did say about constitutionality in the statement when we first introduced this legislation, I will read the paragraph. "Now I would say to you that this bill is constitutional, by which I do not mean that I predict the Court tomorrow would hold it so. I mean instead that a fair reading of our Nation's history demonstrates that the first amendment was never meant—and until recently never understood—to bar the sort of aid which we propose."

Now, sir, several points. First of all, may I be clear, and make sure I heard you right, that in your view it is unconstitutional for a person to deduct contributions to a church or synagogue from his income taxes?

Mr. **Pfeffer.** In my view. I don't make the constitutional law. In my view it should be so held.

Senator **Moynihan.** It should be so held. I see you are counsel to the New York Committee for Public Education and Religious Liberty. I see that the New York State Council of Churches is a member. Do you think it is their view that deductions to churches should be held unconstitutional?

Mr. **Pfeffer.** I can only say to you that this statement was read by the chairman or the chairperson of the New York Committee for Public Education and Religious Liberty and I was authorized by the chairperson of that committee to state to this committee that they endorse the statement. The question which you put will have to be put to her and not to me, I am just an agent.

Senator **Moynihan.** I am asking your own view, not trying to associate you with others.

Mr. **Pfeffer.** It should be asked of somebody else. I am here as a constitutional lawyer.

Senator **Moynihan.** You are of the view deductions of contributions to churches are not constitutional?

Mr. **Pfeffer.** No: I didn't say that at all. On the contrary, the Supreme Court has ruled they are.

Senator **Moynihan.** You feel that this ought to be held unconstitutional. You are holding that the Supreme Court has ruled wrongly?

Mr. **Pfeffer.** It is not the first time in my opinion the Supreme Court is wrong but, nevertheless, the Supreme Court makes the law of the land for me as well as it does for this committee.

Senator **Moynihan.** It is a free country, you don't have to agree with the Supreme Court about everything.

Mr. **Pfeffer.** I have written enough on the subject to indicate my own views. I really do not wish to take up the time.

Senator **Moynihan.** I would like to ask you to pursue two general points. First of all, you cite *Tilton* v. *Richardson* and say that was the decision in which the constitutionality of the Federal Higher Education Facilities Act of 1963 was upheld.

Mr. **Pfeffer.** Not completely.

Senator **Moynihan.** Well—you cite the decision, and you say the plurality distinguished between lower and higher institutions of learning primarily on the ground that, in the words of the Chief

Mr. **Pfeffer.** That the students at the college level are less impressionable and less susceptible to religious indoctrination."

Now, sir, would you accept the proposition that this is an empirical satement, it is not a statement of law but a statement of empirical, demonstrable fact?

Mr. PFEFFER. I think it is a statement which used legal phraseology, that is a court could take judicial knowledge because it is so obvious. It seems to be so obvious to me I don't think it would require——

Senator MOYNIHAN. What is so obvious?

Mr. PFEFFER. That the students at the college level are less impressionable than students at the elementary and secondary.

Senator MOYNIHAN. What if I said to you I am a professor, too, and it is not obvious to me. How then do we determine the accuracy of the statement?

Mr. PFEFFER. The courts have ruled. The courts have ruled all over, not only the Federal and State courts, not only institutions, that for a court to take judicial notice of a fact it need not be one which is agreed upon 100 percent by all who are knowledgeable. If it represents the main current of informed opinion, it may judicially be noted by the court.

Senator MOYNIHAN. But I didn't put to you any very alarming proposition. I said to you that is an empirical statement; is it not?

Mr. PFEFFER. I think so.

Senator MOYNIHAN. It is an empirical statement subject to standards of evidence, of inquiry, replication.

Mr. PFEFFER. Of course.

Senator MOYNIHAN. Now, what is the evidence upon which this empirical statement was based?

Mr. PFEFFER. Well, again I come back, when a court takes judicial notice of something that means it does not need evidence, even agrees to it. The great majority agrees that it is accepted as true.

Senator MOYNIHAN. I told you I don't agree.

Mr. PFEFFER. I didn't say——

Senator MOYNIHAN. Please don't play with words here. I am asking a question. Is it the case, as you understand it, that there is any research evidence that would suggest that it has been established that college students are less impressionable and less susceptible to religious indoctrination than precollege students? Do you know of any research?

Mr. PFEFFER. I think there probably is.

Senator MOYNIHAN. You don't know of any?

Mr. PFEFFER. I certainly——

Senator MOYNIHAN. May I ask of the room does anyone here know of any? Would anyone cite me something from the American Psychological Journal, or that of the American Academy of Arts and Sciences? Is there anybody in this room who has ever seen an empirical inquiry into that matter? No? I will tell you why. As far as I know there is none.

Mr. PFEFFER. I am not so sure.

Senator MOYNIHAN. And you are not so sure because no one knows.

Mr. PFEFFER. Let me indicate what my not so suredness is predicated on. There are quite a number of studies over the years which indicate that the rate of participation in the program of released time for religious education, which is voluntary and must under the Constitution be voluntary, decreases. The percent of participation decreases the higher you go up in the level of education, let me finish, sir, so——

Senator MOYNIHAN. I am not interrupting, you don't have to say let me finish.

Mr. PFEFFER. There is a greater percentage in the elementary schools, a dramatically lower percentage in the secondary schools, and a still more dramatically lower percentage of those who voluntarily enroll for theology or religion courses at the college level. I think off the top of my head that was fairly cogent evidence supporting what the Supreme Court has found to be judicially noticeable.

Senator MOYNIHAN. Well, you would never get a Ph. D. at my university. You have established a correlation where there may only be an association. Persons may go to released time at a diminished rate as they grow older. Whether that establishes that college students are less impressionable and less susceptible to religious indoctrination, well I am saying anybody who thought that those thoughts meet the standards of evidence of higher education should understand that they don't meet ours.

Let me say to you what I think, sir, which is that the Court asserted a fact which was never proven, and which in fact no one has ever undertaken to prove, and that may not be provable. That is an assertion I can't prove either but let me say to you that if you look at the literature of trying to prove what impressionable is—God have mercy on the man who sets out to get a Ph. D. by saying that at 17 you are less impressionable than at 14 or 15.

The Supreme Court, gave us as fact what at most is hypothesis. Would Cardinal Newman have judged that boys at Eton were more impressionable with respect to religion than boys at Oxford? All they did was avoid chapel at Eton and when they came to Oxford they came as enthusiasts.

Where is the evidence? There is no evidence and the Court is telling us things, suggesting things are known which are very likely unknowable.

I have a much more serious question. You have propounded a doctrine of constitutional fatalism which I would like to inquire into a bit more.

Your suggestion was that since that time of *Marbury* v. *Madison*, "those who disagree with a particular decision of the Court can resort to a constitutional amendment to overrule it, and that has been done more than once in our history," which is true. Then you say, next page, "within our own years we have experienced the tragedy of defiance in some communities of the Supreme Court's decisions, declaring racial segregation in the public schools to be unconstitutional." You say that?

Mr. PFEFFER. I do.

Senator MOYNIHAN. And you thought it was tragic that those people defied the Supreme Court's ruling?

Mr. PFEFFER. In my opinion.

Senator MOYNIHAN. Let me ask you, do you think it was tragic that the National Association for the Advancement of Colored People defied the Supreme Court's ruling in *Plessy* v. *Ferguson* and went into Topeka, Kans., and got the *Brown* v. *Board of Education* ruling?

Was it tragic that the NAACP spent 50 years trying to overturn a decision of the Supreme Court?

Mr. **PFEFFER**. May I respond to that?

Senator **MOYNIHAN**. Of course you may respond, sir.

Mr. **PFEFFER**. Thank you. I would like to respond to it. As far as I know, no member of the NAACP has ever taken an oath to uphold the Constitution, which is required of every member of this committee, of the Senate, and of the Congress. It seems to me that is a critical distinction between the two situations.

Senator **MOYNIHAN**. In what you are talking about, you did not say anything at all about Members of this Senate. You said that there had been a tragic defiance in some communities. I presume you do not mean the Senate Committee on Finance, of the Supreme Court decision declaring racial segregation in public schools to be unconstitutional. But the NAACP and other such organizations defied the Supreme Court decisions and went into court and said the Supreme Court decisions are wrong, and *Plessy* v. *Ferguson* is wrong, and the day came when the Supreme Court said you are right, it was wrong, and reversed itself.

Mr. **PFEFFER**. Maybe I misunderstood you, Senator, but I don't know, I can only tell you from my own experience. I was in the South during those days. I was chairman of a lawyers constitutional defense committee which was trying to achieve exactly what ultimately was achieved.

Senator **MOYNIHAN**. You were trying to get the Supreme Court to change?

Mr. **PFEFFER**. I was trying to achieve what you are trying to achieve, what we are all trying to achieve, to get restaurants, hotels, schools, to accept black people. I do not know anyway how at that time I was defying the Constitution of the United States or in any way doing anything which was not 100 percent within the Constitution as it had up to that time been interpreted.

What we were trying to accomplish was to prevail upon the legislatures in the States, in the Southern States, to do what the legislatures in the Northern States had done, a great majority of them, forbid racial discrimination in public accommodations of public schools.

I can hardly see an analogy to the situation here where we are asking, where this committee is seeking to, perhaps defy is too strong a word, disregard a decision of the U.S. Supreme Court.

Senator **MOYNIHAN**. I don't know. As I say, I am not persuaded. I want to go over this once more. We have lots of time.

Mr. Chairman, will you let me hang on this because I think it is very important. We are being told we have taken an oath not to question the Supreme Court. That is a novel thought.

Mr. **PFEFFER**. I never made that. It would be novel to me.

Senator **MOYNIHAN**. You have said that it was tragic that some persons defied the *Brown* decision, but somehow it was not tragic that some other persons defied *Plessy* v. *Ferguson*.

Now, I appeal to your sense of consistency here. Under *Plessy* separate but equal facilities were ruled to be constitutional and for three generations valiant persons argued in court that this was a wrong decision, that they were not constitutional, and in time the day came when the Court said that is right, you have been right all along, we were wrong in 1896.

What I want to suggest to you is that free-born Americans need not fear asserting a different judgment from that of the Supreme Court. We have the right to suggest they are wrong and I know that one of the dominant views of the second half of the 19th century was the fear that the persistence of religious institutions and their greater prominence would infringe upon liberties, and there is a history here, which is not a legal history but a political history. Catholicism was never associated with republicanism, monarchism and the like. Immigrants were not associated with republicanism. That is why we passed the immigration laws, which began at the same time. It is all part of fearing, a fearfulness of strangers, and that is understandable, but it has nothing to do with constitutional law and, sir, I assert to you, you don't have to agree with me one bit that we have a perfect right to put forward our views of what is constitutional in this body, the U.S. Senate.

I have said before, I say to you again, we are under no obligation to agree with the Supreme Court. We are only under the obligation to obey it, and we have a right to ask the Court to reconsider as generations move from one proposition to the other. The idea that this Congress is bound to do nothing more than that which it thinks the Supreme Court will find constitutional is a novel notion for which I find no precedent, and I have no anticipation of it being adopted.

We will do what we think is constitutional. We are an equal body of the Federal Government. We are not bound to defer to what we think might be the judgment of these men.

When they do act we will of course obey. That is constitutional. But in the meantime, I cannot accept the notion that we must defer to them. That is the notion that would have kept distinctions based on race in place today—if everyone said "the Court has ruled in *Plessy* v. *Ferguson*, we had better not challenge them." I reject that.

Second, I suggest to you the extraordinary proposition of the Chief Justice about comparative levels of impressionability of youth 17 years 9 months as against youth 18 years 3 months suggests a fatally fragile set of undocumented, nonscientific assumptions which in the end go back to something very close to prejudice.

Thank you very much, Mr. Chairman.

Senator Packwood. I don't know, I hadn't seen anything other than news reports, it seems to me most of the news reports I have seen of the so-called money conversions have been of college students or older and not high school students.

Senator Moynihan. Terrifying. If I were a secularist alarmed by the rise of religion, the first thing I would do would be abolish higher education in this country. Statistics prove that 90 percent of Americans are pagans at 14 and rather pious people at 21. Those professors are up to no good.

Senator Packwood. I want to go back, Mr. Pfeffer, to the last question I asked, because I want to make sure I understand your answer.

Did I understand you to say as long as there was no appropriation from the Public Treasury, a contribution, voluntary contribution to a church-related school, in your opinion, would be constitutional, as the Court has decided in previous cases?

Mr. **Pfeffer.** If I were compelled to guess how the Supreme Court would decide, my guess would be that they would decide that it is constitutional.

Senator **Packwood.** Then, why any difference, because we are not appropriating any public money. If you send your child there and pay a tuition and take part of that off your income tax?

Mr. **Pfeffer.** The only thing I can say, the Supreme Court has so ruled in case after case, I question its validity, too, but I am here not to express what should be but to state what I believe on the basis of the decisions of the Supreme Court, the Supreme Court has held. If you have a question on that, maybe next time it comes to the Supreme Court you argue it to them. The Supreme Court has so held.

Senator **Packwood.** What you were saying by the simple element of changing the word "tuition" to "contribution" we can probably make this constitutional in accordance with the present Court's decisions?

Mr. **Pfeffer.** Contributions to parochial school? Contributions to parochial schools should be allowed as charitable deductions? My guess is that the Supreme Court would hold it all right.

The whole point of this law seems to me it takes the money which you have paid into the Treasury of the United States because the revenue collector is behind you, if you don't pay it you will go to Federal prison, and use that money.

Senator **Packwood.** I am curious, apart from the refundability, where do you get the conclusion out of the rest of this bill. We are not taking money out of the Federal Treasury and paying it to a church school in the bill with the one exception of refundability, and I grant you that is a different part, and there is a possibility of unconstitutionality. We will argue that out.

Where do you get that in the rest of the bill?

Mr. **Pfeffer.** May I say what the Supreme Court has said?

Senator **Packwood.** Wait a minute. I want to know where you get that in the bill?

Mr. **Pfeffer.** I will tell you that. I said this to the Supreme Court in those cases the Supreme Court seemed anxious to have accepted it and it is part of the law and I will try to say it again. The difference is that if I do not want to pay the money to the parochial school I do not have to. If the Congress by its law compels me to pay that money to the Federal Government, and the Federal Government turns it over to the parochial schools, whether it does it by a cash grant directly or by saying to the parents of parochial school students, folks, you owe the government $1,000 on your tax bill, like everybody else, give us that $1,000, we will send you a check for $500 to use for your parochial schooling tuition, that it seems to me, would be clearly unconstitutional. What they are doing here is saving the taxpayer a few cents for postage stamps. You don't send the money, we will send it over to parochial schools, you go ahead and send it over to the parochial school yourself and we will say it is as if you gave it to us and we turned it over to the parochial schools. That is the reality of the situation.

Senator **Packwood**. In essence, you are saying in your opinion the present Supreme Court would say that would be permissible and for voluntary contributions to the parochial schools?

Mr. **Pfeffer**. Directly to the parochial school and not as a tax credit, yes.

Senator **Packwood**. Not as a tuition credit, you mean?

Mr. **Pfeffer**. Yes.

Senator **Packwood**. No other questions? Pat, do you have any more?

Senator **Moynihan**. No. Thank you, Professor Pfeffer. These are good arguments well made. God help us if you get on the Court next.

Mr. **Pfeffer**. I think there is little danger of that.

Senator **Packwood**. Has Mr. Valente arrived? If not, Mr. Solomon, who represents the Congress of Racial Equality.

STATEMENT OF VICTOR SOLOMON, DIRECTOR OF EDUCATIONAL AFFAIRS, CONGRESS OF RACIAL EQUALITY

Mr. **Solomon**. How are you?

Gentlemen, I am Victor Solomon, Director of Educational Affairs for CORE, Congress of Racial Equality. I am pleased and our organization is pleased to have the opportunity to be here today to testify, to give our views on this bill. CORE is an organization that has come through many battles for educational quality. Our organization, rooted in major black communities throughout the Nation, is in a unique position to speak on this bill on the basis of our own experience in trying to improve the quality of education available to the masses of black people throughout this country, who have had no alternative other than government schools.

Blacks in general have relied in the past on public schools of this country to educate our children, and being poor have depended on the public schools to better our condition. In contrast to some other organizations, CORE has consistently fought for local control and accountability of public schools in an effort to make them more effective in helping our youngsters.

The results of our struggles to improve the education available to our children in public schools have been dismally ineffective. Recent test scores published in the New York Times for reading and math achievement of our public school youngsters indicate a continually plummeting level of achievement. In the past few years, past 2 years, to be exact, the reading grade levels in New York City schools has dropped from 47 to 40 percent of the youngsters who are reading at or above level.

Many people in the education business have stated in the past that the problem is that inner city children can't learn or they can't learn well because of their family problems and the conditions of society.

That position has been disproved and has been proved to be bunk by the many alternative schools, alternatives to the Government schools, that have been established over the years and have proven success with the very youngsters who have failed to learn in the public schools.

And for public school officials to lessen their efforts and to propose such social theories, that our children can't learn, as an explanation for their failure is the utmost negligence and dereliction of duty.

We know from our own school, the CORE Community School, a private school in an impoverished area of New York City, in the Bronx, a school which is attended by the very same youngsters, same social and economic level, for the most part, who attend the neighboring public schools, that our children can learn.

We not only find that, too often, too many public schools have failed to impart the basic skills that are necessary properly, but not unrelated to that, we find that there is a failure to provide the minimal safety and discipline. Our parents daily testify to this, parents of youngsters who are wait-listed to attend CORE's school and others, also attest to this.

At the same time that we see the failure of so many of our public schools, we see nearby parochial and private neighborhood schools, that are doing an adequate job, day in and day out, in immediate juxtaposition to these failing Government schools. What is astounding is that very often these neighborhood private schools or nonpublic schools are operating at considerably less cost than are the Government schools.

The CORE school, for example, operates at a cost of $1,000 per year per child. At the present time the New York City public school expenditure per child is closer to $3,000 per year. Even allowing for differences in salaries and services that the central public school board in New York City provides to nonpublic schools and other factors, this difference of 3 to 1 is massive and must speak to waste and an unacceptable level of cost effectiveness to taxpayers and others.

An organization like CORE, which depends on Government commitment to the needs of our people, has to be very vigilant of those whose services are not cost effective because they take away from other needs that exist in our community.

All of these problems in the public schools have been chronicled more than adequately in the news media and elsewhere, but we believe in CORE that now with Senate bill 2142 we have a chance to do something about the situation. I will explain how.

We are aware that the rich and those who are more economically affluent in America have always been able to vote with their feet, so to speak, on the question of their children's education. If they haven't liked the public schools they have had the economic well-being to send their children to private schools and to pay the tuition, while at the same time supporting through taxes Government school systems, but it is time to give the poor and minorities the chance to vote with their feet as well.

The chance to use other than Government schools, any form of private education, is an option that they have not so far had, and we believe Senate bill 2142 is a very important start in the direction in allowing this.

While in all probability the introduction of a voucher system which would give parents a voucher to spend at any school, public or private, would be most favorable, this bill would be a definitive way of enlarging the educational choices available to poor parents.

Now while there are many effects to a tax credit bill, we believe that to the extent that it gives the option of using public or private education to parents, in our communities, permits its support.

While we don't believe that the bill in its implementation will transform in any immediate sense the reality of the masses of our people attending public schools, we feel it will be a competitive stimulus to the public schools.

We feel that the presence of even a fairly small number of alternatives available to our parents could provide that competitive stimulus to the public schools.

We feel that the innovations that might be possible in schools that could be started in our communities, based on the increased number of persons who may be able to afford tuition based on the tax credit of the bill, merits the support.

One item that we must cover involves costs. While it is projected as an objection to this bill that it would be expensive, and a figure of $4.7 billion has been mentioned, we would ask what cost we would want to ascribe currently to Government support which is related to the failure of our public schools, for the most part, Government support of welfare systems, of prisons, and of any number of training and remedial and other programs, aimed at accomplishing what the schools fail to do in the first instance.

What cost do we want to ascribe to those? We feel that it is the failure of schools which our people currently attend which must be addressed, and a figure of $4.7 billion would be inexpensive, to say the least, not to mention the possibility of saving human lives based on our students who graduate from our schools unable to compete, able only to compete for Federal support of any number of sorts that we find presently.

We don't feel that this bill would benefit religious schools unduly, and our position on this is the position of black parents throughout the country, who currently send their children to religious schools, although they do not ascribe to the religion of the schools to which they send their children. We find that, in the words of one of our parents, it is not the religion that bothers them, if their children absorb a little religion that is other than their own, it is the three "r's" they are not getting in the schools to which they have been currently forced to send their children that disturbs them.

I would comment on two specifics of Senate bill 2142: First, the provision allowing a refund if the tax credit is greater than the tax owed is a very important provision for the persons whom CORE represents, persons who are poor.

Also I point out that the $500 limit makes this bill much more helpful to parents of local nonpublic schools, many of which have tuitions of only a few hundred dollars a year, but which although low is still a hardship to these persons than to parents of elite private schools.

While the credit might not be significant to some who attend expensive private schools, it is extremely significant and important to the masses of poor people who would have greater options.

Finally, I have no doubt that CORE speaks for a majority of black people when we say that we need the freedom to select various educational options now and that every day that this is not granted is a day when more black children fail in our bogged-down public school systems. CORE urges you to act on Senate bill 2142 without delay.

We thank you for this opportunity to present our views.

Senator **Packwood**. Mr. Solomon, it is an eloquent statement and it was eloquently presented.

I personally thank you very much because with your support this gives us an argument and dimension we might not otherwise have, and you may be the tipping difference between whether or not this bill passes in the conference or in the Ways and Means Committee. We are confident we can pass it in the Senate. It is nip and tuck there.

I have no questions but thank you very much for coming.

Senator **Moynihan**. I would like to thank Mr. Solomon and to observe that there is this cluster of ratios of expenditure on Government schools as against private, if you will, alternative schools, the term you used.

The CORE school in New York City, where is that?

Mr. **Solomon**. It is in the South Bronx.

Senator **Moynihan**. South Bronx?

Mr. **Solomon**. Yes, sir.

Senator **Moynihan**. You are running about $1,000 per child per year as against about 3,000 in the public schools, which brings you out at roughly 33 percent, and that just about brackets Dr. Senske's experience nationwide, which is about 34 percent. In Philadelphia we found it about 20 percent. It is well under the 50-percent point, and it speaks to efficiency; it just does.

The thing I would like just to comment on and to thank you for raising is the thought that this legislation would look to some like a route to educational vouchers, wouldn't it?

Mr. **Solomon**. Yes.

Senator **Moynihan**. That has been one of the areas of educational innovation that has really attracted a lot of interest among educators and yet has sort of defied practice. I think out in Alum Rock they may still have something going but the institutional resistance is formidable. If there is anything that we have learned about education it is that there is nothing much to fear from experiment and innovation because we obviously haven't hit on the optimal arrangements yet.

You spoke of the dismal ineffectiveness of public school education in our great cities. Let us not suppose that we are proposing to tamper with a superbly functioning system for some exogenous reasons of our own. We are addressing a failing system, you would agree.

Mr. **Solomon**. Absolutely.

Senator **Moynihan**. There was a time—and we really need some decent history—when the public school system was thought to be the embodiment of modernity and effectiveness and efficiency and love of country.

Mr. **Solomon**. Right.

Senator **Moynihan**. Well, that time is a long time passed and I don't know how it happened. I went to school in East Harlem, to Benjamin Franklin High School. You know Benjamin Franklin?

Mr. **Solomon**. Yes.

Senator MOYNIHAN. It wasn't a very good school then and it is not a very good school now.

Mr. SOLOMON. A lousy school now.

Senator MOYNIHAN. Well, we had good basketball teams, and we do now. It has seen several ethnic turns and has always been the bottom of the region. No one knows how to do any better now than in 1943 when I graduated. I think we may do worse today. There is a clear decline in measurable levels of achievement. Some of these indexes are reasonably stable over time, such as regents scores. Are you a New Yorker?

Mr. SOLOMON. Yes.

Senator MOYNIHAN. You know these references. We are doing less well than we did and a claim can be made on public policy that, now, listen, the public arrangements are not working, and alternative arrangements are legitimately introduced. If you can't do better than that somebody else has the right to try.

That is not irrelevant—the idea that you could bring about levels of innovation by this measure, Mr. Chairman. It is not just a form of continued support for existing systems, which are so threatened and might go under if we don't have this, but the possibility that you might indeed create new systems. That will terrify some people.

Mr. SOLOMON. Right, certainly would, but it is what is so necessary because we are dealing with a failing system.

Senator MOYNIHAN. You are not afraid of terrifying some people?

Mr. SOLOMON. I think it is the only way that we can succeed in this problem of overcoming these obstacles through terrifying some people who feel they are very much beholden to a system which is not doing anyone any good, yet it resists change, and the experience of CORE and others, and we have the battle scars of the last 10 years to show it, is that these large urban school systems are so bureaucraticized and resist change and that there have been few alternatives people have had to them.

Senator MOYNIHAN. I think, sir, that it can be said your life will not likely be a very happy one but maybe very successful.

Mr. SOLOMON. Thank you.

[The prepared statement of Mr. Solomon follows. Oral testimony continues on p. 129.]

STATEMENT OF VICTOR SOLOMON, DIRECTOR OF EDUCATIONAL AFFAIRS, CONGRESS OF RACIAL EQUALITY

SUMMARY OF POINTS

Where CORE has been: supporting improved and community-controlled public schools, but has met obstacles.

The problems: 1. Abysmal failure of public schools to teach basic skills, 2. Lack of safety and discipline in public schools, 3. Massive bureaucracies in public system, unresponsive to community, 4. Meanwhile, private schools in same areas are succeeding, but inner-city parents cannot afford them.

What's needed: options for poor parents; either 1. voucher legislation, or 2. tuition tax credit.

Effects of this bill: 1. Will benefit those enabled to attend superior schools, 2. Will stimulate public schools to improve, 3. Will give real community control of schools to Black parents, 4. Will enable all parents to choose schools that reflect their values.

Cost: given massive waste in present system, this bill may actually result in a saving, but even if not, some expenditure is worth it if children finally start learning.

Objections others will raise; how we answer them: 1. We shouldn't be stopped by those with self-interest against bill, e.g., teachers unions, 2. Blacks do have what it takes to make greater choice work; they can choose schools intelligently and/or start own schools, 3. This bill will not benefit the elite much, 4. Schools would only hurt themselves if they "passed through" savings from this bill, 5. Fly-by-night schools can be controlled by existing regulations, 6. Segregation need not be encouraged; it could even be greatly lessened, 7. Religious schools are not unduly benefited.

Poor and Minority people need this bill enacted now.

Gentlemen: I am Victor Solomon, Director of Educational Affairs for CORE, the Congress of Racial Equality. CORE, as an organization which has come through many battles for educational quality and which today is rooted in major Black communities throughout the nation, is in a unique and important position to speak on the Packwood-Moynihan Tuition Tax Credit Bill, particularly in terms of its effects on the poor and minority communities.

As Black people generally have done, we have relied in the past on the public schools of this country to educate our children and enable our people to better their condition. In contrast to some other organizations, we have consistently fought for community control of public schools, and we have mobilized to bring greater effectiveness in public school teaching.

What have been the results of our struggles? Let me use New York City as the most visible example. Instead of real community control, we got what was called decentralization, which is a sham, a fraud. The citizen fighting for educational quality now has two bureaucracies to deal with, one on the district level and one at the central board. Meanwhile, the individual districts are not given power over hiring or budgets to anywhere near the degree that an autonomous district would have such power. CORE had called for an independent, completely autonomous district for Harlem, and decentralization is a long way from that type of community control; in fact, there is a good case for saying that decentralization has produced a worse system than the old centralized control. The same problems exist in Detroit and other cities which have adopted decentralization schemes.

But far worse than the failure of decentralization is the abysmal failure of public schools to teach basic skills to children in the inner city. The capacities of our young people are being stifled as they fall one, two, three, or more years behind grade level in reading and math skills. In response to demonstrated need, CORE has begun a community school in the Bronx. In this school, children read, on the average at approximately grade level, while in the public schools of District 9, which serves the area, children are over a year behind by grade 5 and almost two years behind by grade 8, according to latest statistics released just this month. And the public school situation is worsening from year to year. In the past two years, the percentage of children reading at grade level in New York City schools has dropped from 47 percent to 40 percent.

Many people in the education business say the problem is that innercity children can't learn well because of their family problems and the conditions of society. That position is, quite frankly, bunk, and for public school officials to lessen their efforts, using societal problems as an excuse, is negligent and dereliction of duty. We know, from CORE Community School and many other private schools in impoverished areas, that inner-city children can learn. We take the same types of children as the public schools, not any special selection, and we teach them. We challenge the public schools to start working again properly.

Not only do public schools not impart basic skills properly, they cannot provide minimal safety and discipline. The recent killing of a teenager in a Queens high school is but an example of the lawlessness that grips our urban schools.

At the same time we see nearby parochial and private schools, often the neighborhood Catholic school, doing an adequate job, day in and day out, in the same areas as the failing public schools. Furthermore, these private schools are operating at far less cost than public schools. While the New York City public schools, with their massive, wasteful bureaucracy which retards rather than aids progress, spend almost $3,000 per pupil per year, we spend $1,000 at CORE Community School, and many Catholic schools are spending only $500. Even allowing for differences in salaries, services that the central board provides to non-public schools, and other factors, this is a massive difference. Waste in our public schools costs the taxpayer billions annually.

All of these problems with the public schools have been chronicled in the news media and elsewhere. But now, with the Packwood-Moynihan bill, we have a chance to do something about the situation, and I'll explain how.

The rich and the upper middle class in America have always been able to vote with their feet, so to speak, on education. If they don't like the public schools, they send their children to private schools and pay the tuition. It is time to give poor and minorities the chance to vote with their feet, the chance to use private education, and Senate Bill 2142 is one way to do it. While in all probability the introduction of a voucher system, which would give parents a voucher to spend at any school, public or private, they chose, would be a more definitive way of enlarging the educational choices of poor parents, certainly the tax credit is a major step in the right direction.

What will be the effects of the tax credit bill? First, it will directly help those students who will be enabled to go to better, nonpublic schools when the public system has failed them. The use of voucher or tax credit relief for parents of children who are doing poorly, say, over a year behind national norms in reading and math, in the public schools, is justified on simple fairness grounds, but there is no reason why all parents should not have greater choice.

Perhaps most importantly, there will be a competitive stimulus to the public schools to improve. We at CORE have not given up on the public schools; we recognize that whatever legislation is passed, the majority of American children will be educated in public schools. But the presence of even a fairly small number of alternatives, even just the potential of parents being able to reject a school that is not doing its job, can work great changes in the public schools.

Innovation in both public and private education will be stimulated by the tax credit bill. Dedicated individuals will be able to start their own schools and try something new that may work for a change.

Also, very importantly for Black people, Blacks and other groups will have real control over their own schools. Either government-operated schools will be responsive to their needs or they will start their own schools.

With tax credit, more people can choose schools that reflect their own value systems. We believe that Black children must be taught to have pride in their heritage and recognize their differences as well as their commonality with other folk. Black alternative schools such as CORE Community, or Uhuru Sasa in Brooklyn, serve an essential purpose. We also respect those who want schools with a particular religious orientation or educational philosophy.

Let me deal with costs. No doubt this bill can be expensive; it is projected to cost $4.7 billion annually. However, given the massive waste in the public education system that exists now (remember, I have already said that public schools in New York City cost three times what neighborhood non-public schools do), I believe that, even with additional students being helped (those now attending private schools), the end result will be a saving to the taxpayer. But even a greater expenditure than at present would be justified if it would end the massive logjam in urban education and result in children learning to read, write, and figure.

There are many objections to this bill that will be raised; it is beyond the scope of this brief statement to rebut them all. There are those who will oppose the bill out of self-interest, such as some representatives of teacher's unions. However, whatever the union leadership may say, the competent teacher of today will not be done an unfairness by offering greater choice through this bill.

Others will say there aren't enough dedicated and qualified Blacks to start alternative schools and to properly utilize the greater choice. Or they say Black consumers will be misdirected and will not be able to choose schools. All I can say is, they underestimate Black folk. This isn't the first time that's been done.

Some say this bill will benefit the elite. But at 50% of tuition with a maximum of only $500, what would it matter to the elite. Such an amount would barely be a dent in the $3,000 plus annual tuition of your Eastern elite prep schools. Even if the elite were to benefit greatly, if that were the price for greater choice for poor and minorities, I would pay that price.

It's been said that private schools might raise their tuition and "pass through" the savings from this bill. But how would that be in their self-interest. They would have no greater market than today if they raise costs. And consumers will hardly look favorably on a school that rapidly jumps its tuition when there are other competitive and cheaper schools.

Would there be many fly-by-night schools? We have regulation mechanisms already in force from state education departments regarding accreditation.

Would this bill lead to more segregation in schools? It depends on how it is worked. An approved school, for this bill, could be defined as one with racially non-discriminatory policies, and there could be appropriate monitoring. But even segregation is not as much a problem as the present situation in which Black children are not learning basic skills.

Would this bill unduly benefit religious schools? There may be some legitimate Constitutional questions. However, unlike some other bills, this bill has a broad class of beneficiaries and is not particularly directed toward religious-school parents. But whether children are educated in Catholic, Protestant, Jewish, non-secretarian or whatever schools is not nearly so important as whether there is discipline and good learning going on in that school. This is why so many Black parents who, though they are not Catholic or Lutheran, for example, choose the school of that denomination in their area.

Let me comment on two specifics of S. 2142. First, the provision allowing a refund if the tax credit is greater than tax owed is a very important provision for people of limited income and should definitely be maintained. Also, I point out that the $500 limit makes this bill much more helpful to parents of local nonpublic schools, many of which have tuitions of only a few hundred dollars a year (but still a hardship to inner-city parents), than to elite private-school parents, who will still have thousands to pay and who will never use the public system under any circumstances.

I have no doubt that I speak for many, if not a majority, of Black people when I say that we need freedom of educational options now and that every day this is not granted is a day when more Black children fail in our bogged-down public school systems. CORE urges you to act on the Packwood-Moynihan bill without delay. Thank you for this opportunity to exchange views.

Supplementary Documentation for Testimony of Victor Solomon, Director of Educational Affairs, Congress of Racial Equality (CORE)

At the Senate Finance Committee hearings on S. 2142, the Packwood-Moynihan tuition tax credit bill, Wednesday, January 18, 1978.

I. New York Daily News article, Sunday, October 9, 1977: Blacks See System Failing and Open Private School; CORE Alters Policy to Find "Better Way" (re-typed for better readability).

II. New York Times article, Sunday October 9, 1977: Catholic Schools Attain Stability In Urban Cores (re-typed for better readability).

III. New York Magazine, September 12, 1977: Learning a Lesson From The Catholic Schools, by Robert G. Hoyt (photocopy).

IV. New York Times, Wednesday, January 11, 1978: New York School Reading Level Still Low (photocopy, with list of districts and their corresponding neighborhoods attached).

The following article appeared in the Manhattan/Bronx Living Section of the N.Y. Daily News, Sunday, October 9, 1977:

Black See System Failing and Open Private School; CORE Alters Policy To Find "Better" Way

(By David Medina)

In a reversal of previous policy, the Congress of Racial Equality has given upon the idea that poor black and Hispanic children can be properly educated in the New York City public school system.

Instead, the organization now advocates the establishment of private, parent-financial community schols as a better and cheaper alternative.

To prove its point, CORE has opened the first of what it hopes will be a series of community schools at 1637 Washington Ave. in the Claremont section of the Bronx.

"Decentralization hasn't proved anything. It's the same people, the same bureaucracy, the same inefficiency and the same increased costs," said CORE's Executive Director, Roy Innis.

And as for busing, the organization maintains that the cost and the results are not worth the effort.

Innis is now arguing that private education is better because it eliminates "The big Board of Education bureaucracy, the phony union contracts and the featherbedding."

CORE estimates it is costing $1,000 a pupil each year to keep the new school open, which it says is only one third what it costs to educate a child in public school. But tuition at the community school is $420 for each child. A second child of a family pays $350 and any subsequent children in the same family pay $280 tuition per year.

Of course, CORE has agreed to make up the difference in cost with a $100,000 subsidy it maintains through donations.

The other advantage is that the school places rigorous emphasis on the "Three R's" and the "Big D"—reading, writing, 'rithmetic and discipline—all of which, Innis says, have been missing from the public school setting.

Given the higher costs and poorer quality of public schools, CORE has joined its parochial school counterparts in demanding that tax dollars used for public education, about $3,000 a student, be diverted back to parents to enable them to send their children to private schools, if they so desire.

"The money would go directly to the parent, giving him a big savings in his child's education," said Victor Solomon, CORE's director of education. "The parent decides the policy and has a hand in the hiring of teachers."

Not so long ago, this educational approach would have been unheard of for CORE. Then last year, the Archdiocese of New York announced that it was closing down Our Lady of Victory school in the Bronx due to lack of money and parents went into a panic.

About half the 200 students attending the CORE school came from Our Lady of Victory. So did four teachers and Principal Edward Callaghan.

"At first we wanted to limit our enrollment to 120 students but the demand was so great we had to increase it to 200," Callaghan said. "We even got a deposit from a woman who wants to enroll her 4-year-old son in 1979.

"Basically, we have a similar curriculum to Our Lady of Victory but we place greater emphasis on things like health and sex education and black and Puerto Rican history. We believe that unless our kids have a positive image of themselves they can't deal with anything else in the world."

The CORE Community School is located on the top three floors of what is called the Gramercy Boys Club Building and students get in a full schedule from 8:15 a.m. to 3:30 p.m.

"Everyone has pitched in to help," Callaghan said. "Parents, teachers and students were all here over the summer painting walls, cleaning up and getting supplies.

"We had a man from the Virgin Islands who offered to catalogue our library. The nursing department of Lehman College has volunteered to set up a health program for us. A guidance counselor from a nearby public school has offered to put in a few hours a week on his own time. Why, we've even had offers for help from the Metropolitan Opera."

The following article appeared on Page 1, Section 1 of the New York Times, Sunday, October 9, 1977:

CATHOLIC SCHOOLS ATTAIN STABILITY IN URBAN CORES

(By Edward B. Fiske)

Diane Sanchez is a widow with two children who supports herself by working as a paraprofessional at St. Paul's Elementary School on 113th Street in East Harlem. Out of her income of $6,300 a year, which includes Social Security benefits, she spends $1,100 a year in parochial school tuition and fees.

While measurement of educational quality is always tricky, data on reading scores from the New York State Education Department, as well as a comparison of reading scores of 80 parochial schools in the Archdiocese of New York with those of the nearest public school, suggest that the belief in the academic edge of the religious schools is well-founded.

Parochial schools have long had advantages not always available to the public schools, such as high motivation among parents and students and selectivity—the ability to choose which students to enroll and, with much less hindrance than public schools, which ones to expel.

Despite numerous closings of parochial schools elsewhere, the United States hierarchy had made a commitment to continue its educational and social services to poverty-stricken areas of New York and other large cities. This commitment, along with the continued demand from poor parents, has thus had the effect of giving inner-city parochial schools a new reason for being.

"Parochial schools used to be justified on religious grounds alone," said Thomas Vitullo-Martin, a former professor at Teachers College at Columbia University,

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where he serves as a consultant to the National Institute of Education on parochial school issues. "Now they are seen as the only alternative to public schools for people who can't afford high tuition elsewhere."

Five years ago it was doubtful whether the Catholic parochial school system in general would survive, much less those in inner-city areas requiring subsidies. According to the National Catholic Education Association, between 1965 and 1975 the number of students in Catholic elementary and secondary schools fell from 5.6 to 3.4 milion, and during the same period the church closed or merged a quarter of its 10,879 elemntary schools and nearly a third of its 2,413 secondary schools.

The attrition is generally attributed to a variety of factors, including a lower birth rate, inflation, the movement of many Catholics to suburban areas where schools had not been built and changing attitudes toward the church.

Local patterns are similar, though not as severe. Since the fall of 1968 the number of elementary school students in the Archdiocese of New York has fallen from 159,059 to 106,940 and the number of secondary school students from 49,850 to 40,959. In the Diocese of Brooklyn, which covers Brooklyn and Queens, elementary school enrollment has dropped from 173,590 to 106,793 over the same period and secondary enrollment from 39,125 to 25,971.

ENROLLMENT DATA

However, in recent years the decline has begun to bottom out. The falloff in enrollment, which was at its worst five years ago at 7.5 percent, is now down to 1.5 percent, and in many dioceses, including Brooklyn, the number of entering first-graders is on the increase.

No one knows what this new phase will bring, but it seems clear that urban schools will play an increasingly important role. Over half (54 percent) of the country's 9,900 parochial schools are in the top 20 metropolitan areas, and one of every seven of the schools can be classified as an inner-city school.

Following a clear mandate from the Vatican, the American bishops have made the preservation of inner-city schools a major priority. "The unfinished business on the agenda of Catholic schools includes the task of providing quality education for the poor and disadvantaged of our nation," they declared in a 1970 pastoral message.

Since 1970 the Archdiocese of New York has closed 18 schools, half of them within the five boroughs but none in hard-core poverty areas. To the contrary, through its new commission for Inter-Parish Financing the chancery has raised $11.8 million from churches in Westchester and other upstate counties in the last five years and distributed it to inner-city parishes, mainly for the support of schools.

The average per-pupil cost of elementary parochial schools in the Archdiocese of New York last year was $462. In the public schools the figure was $2,607.

Most inner-city parochial schools are in buildings that are at least half a century old, often with high ceilings, dark wooden moldings, cumbersome freestanding closets and aged desks. Conspicuously absent from most are the elaborate audio-visual devices and sophisticated reading systems that characterize many nearby public schools. "We're barely able to purchase textbooks," said Larry Kemp, the curriculum coordinator at St. Aloysius in Central Harlem.

SCHOOLS ARE SMALL

Although classes are usually at least as large as those in public schools, the schools themselves are not. "We have 250 kids and 150 parents," said Sister Florence, the principal of St. Paul's in East Harlem. "I can identify every parent. If there is sickness or death in the family, I know it."

Eleanor Ford, the former superintendent of schools for the archdiocese who is now devoting her time to promoting parental involvement in parochial schools, said that a key factor in the educational success of inner-city parochial schools is their religious and moral commitment.

"It's not the organization of the school or how the chairs are arranged that makes the difference," she declared. "It's whether the kids feel good about themselves. It's not enough to just teach. You have to love them, and the Catholic educational philosophy is that you bring the love of the Lord.

"We have a big advantage over public schools because we can deal overtly with values. We can motivate kids from the inside. There are plenty of public school teachers who really care, but they can't always get support in making demands on the kids, and with a variety of parental values they can only teach by the example of their own beautiful lives.

"Moral neutrality is the worst thing you can do to a school."

In recent years, largely in response to demands from a more educationally sophisticated laity, parochial schools have taken major steps to upgrade the skills of teachers.

Among the Sisters of St. Joseph, for example, one of the two major orders supplying teaching nuns to the Diocese of Brooklyn, virtually all teaching nuns now have B.A.'s and the percentage of sisters with masters' and doctoral degrees has gone from 25 to 75 percent over the last two decades.

The Catholic Church's commitment to inner-city schools has often been controversial, in part because many of the students served are non-Catholic. The Archdiocese of New York reported that last year 4 percent of its 57,860 students in inner-city schools were non-Catholic; for Brooklyn the figure was 2 percent.

In individual schools, though, the presence of non-Catholics is often striking. At St. Aloysius School in Central Harlem, for example, a substantial majority of students—194 out of 235—are Protestant.

"We always ask non-Catholics if they want to be excluded from religious instruction" said Monsignor Feeney.

"They never say yes, but it's a little frustrating. You prepare them for sacraments they are not going to receive. The purpose of the church is to serve people, though, and that includes the schools."

The tuition charged by parochial schools—which is higher than in most local inner-city schools than it is in the suburbs and averages from $300 to $450 a year at the elementary school level depending on the number of children in the family—constitutes a major problem for families in poverty areas, and church officials concede that for this reason they rarely serve children from the very poorest homes.

Nevertheless, many poor parents are willing to make enormous sacrifices to meet monthly tuition payments. Isabel Pantoja, for example, the secretary at St. Paul's, spent up to $900 a year, or a fifth of her $4,500 a year salary, for tuition for her three children, all of whom have now gone on either to New York University or John Jay College.

"How do I manage? It's hard," she said. "But I figure that education is the only thing I can give my kids. They understand, and we go light on other things. The week I have to pay tuition the food will be a little bit low."

DISCIPLINE A FACTOR

Such parents cite numerous reasons for the priority they give to a parochial-school education, including the sense of order and discipline that has always been the trademark of parochial education.

Public school teachers in inner-city areas often complain that they spend more time trying to control students than instructing them. "Here, though, you walk in and you find the children are sitting and working," said Mr. Kemp, the curriculum co-ordinator at St. Aloysius in Harlem. "You don't have to shout all day. You can actually teach."

Physical safety is another consideration. Fred Grippon, a 13-year-old student at Fort Greene-Adelphi parochial school in Brooklyn started out in the seventh grade at nearby Sands Junior High School but decided to change over after two months.

"Every day when I came home I would be ripped off," he recalled. "It happened 23 times. It was my decision to come here after I was jumped by two guys. The principal was there and saw it, and I called to him, but he didn't turn around."

Parochial schools' concern for values in general and religious instruction in particular are a major factor in their appeal, though a difficult one to assess. Earlier this year the staff of St. Augustine School in the South Bronx surveyed the parents, and three-quarters of the respondents agreed that "the religious program of the Catholic school is as important as the academic program."

Even discounting the tendency of parishioners to tell priests what they want to hear, this figure is not surprising. Public schools across the country are giving increasing attention to exercises in "values clarification" and "moral reasoning," and secular private schools are finding that their freedom to discuss values is one of their most marketable assets.

A SCHOOL IS SAVED

This was dramatically illustrated earlier this year when Our Lady of Victory Church, which is in the Claremont section of the South Bronx, announced that for a variety of financial and strategic reasons it was closing its school.

Members of the community were shocked. Backed by the Congress of Racial Equality, parents and others, they decided to continue the school on a secular basis. Last month the new CORE Community School opened in a nearby boys club with 125 of the 200 students from Our Lady of Victory School and five of the school's six teachers involved.

"The people here think that the public schools are not really going to teach their kids," explained Victor Solomon, the CORE board member who headed up efforts to create the new school.

Measuring educational quality is imprecise at best, and any comprehensive definition must include subjective factors such as the extent to which students develop positive attitudes toward themselves and the learning process.

By such criteria, Catholic parochial schools in general seem to get high marks. A recent national study by the National Opinion Research Center in Chicago, for example, found that poor Catholics who attend parochial schools are more highly motivated to seek advanced schooling than either similar Catholics or non-Catholics peers in public schools.

Even in terms of narrowly defined academic achievement, parochial schools seem to be holding their own in relation to public schools. Each year the New York State Education Department administers the so-called PEP Tests in reading and math to third and sixth graders in all public, private and parochial schools in the State.

LEARNING A LESSON FROM THE CATHOLIC SCHOOLS

(By Robert G. Hoyt)

". . . Cardinal Cooke has done surprising things for financially troubled parishes and schools. Last year he distributed $9 million . . ."

Seven years ago people who took an interest in Catholic schools were fairly well agreed about their future: The seventies, they thought, would be a decade of decline, the prelude (many thought) to eventual disappearance. The forecast isn't coming true. In New York City and elsewhere in the country, parochial schools are struggling but they're very much alive. And it's not, as the uninitiated might guess, because of the iron will of a desperate hierarchy. The real reasons are more interesting, as a case study will show:

Last September, Our Lady of Victory School, 171st Street and Webster Avenue, in the Bronx, was about to die. With only 200 students, down from 300 a few years back, the school stood in a neighborhood dotted with project towers and burned-out older buildings. Tuition was $400 a year, but at that enrollment the income was not nearly enough to heat the old building, supply materials, and meet the payroll for the all-lay faculty. The parish, also dwindling from demographic shifts, could not make up the deficit, and there were nearby Catholic schools ready to absorb the students if parents so desired.

Even to Terence Cardinal Cooke, archbishop of New York, who has distributed millions of dollars to help parish schools, not every school in trouble looks eligible for rescue. In the case of Our Lady of Victory, the decision to close seemed obvious but, because it was also painful, it was postponed a few times. Finally, in March, since no miracle appeared, it was firmly made and sadly announced. Whereupon the archdiocese learned that the parents did insist on miracles. "We knew they would be disappointed," says Monsignor James A. Feeney, archdiocesan superintendent of schools, "We didn't think they'd get mad." They not only got mad, they organized, searched for allies, found some, and made a plan. His eminence found a reheated potato in his lap. The planners estimated that if the school were to operate next year, it would run up a deficit of $83,000. If the cardinal would kindly furnish $33,000 of that, somebody else was prepared not only to put up the rest but to take over responsibility for running the school—same buildings, mostly the same program, and mostly the same teachers. Despite the career risks involved, six of the eight were willing to stay. The twist in the story is that the somebody else was a corporate somebody: the national headquarters and the New York chapter of the Congress of Racial Equality. CORE? Yes, apparently it didn't die with the sixties. Fifty thousand dollars? Right on; the money was not exactly in hand, but it was in the budget. But why? Apart from a few small programs modeled on Head Start, CORE is not in the school business, and it's not exactly affluent.

Victor Solomon, CORE's director of educational affairs, says CORE was willing to scrape up the money for the same reasons parents are scrimping to pay tuition. "So far we've served in an advocate role, trying to make the public schools better. Now we're beginning to think about alternatives. Other people have them; why not poor people, why not blacks?"

CORE looked at test scores, says Solomon, and found Our Lady of Victory pupils about one year behind national norms. Children at nearby public schools, drawn from the same population, were *three* years behind. "Also," he continued, "the parents perceive the school as much safer, much more disciplined. It's an anchor for them. Without the school, the community will deteriorate because the kind of people who care most are going to leave."

Noticeably, Solomon said nothing about religion. Neither, until prompted, did the pastor of the parish, Father Robert Stern, who originally backed the CORE proposal. Even under parish control the school had not been all that sectarian in religious education. Stern described the archdiocesan religion curriculum as "more Christian than specifically Catholic." Communion and confirmation classes were taught after school hours to those who wanted to come; black studies and sex education were taught under the rubric of ethics and values. In any case, Stern points out, more than 80 percent of the parents had no affiliation with the parish. The reason they desperately wanted the school to continue (to the point of picketing the chancery office) was not that the school was Catholics; it was because "they see it as secure, reliable, and academically superior. And it gives them a choice, which is something they don't have in most aspects of their lives."

Despite parental pleas and the picketing, Terence Cooke turned down the CORE request. It can be presumed that it wasn't the request for money that stopped him, because, from his track record, the cardinal does not seem reluctant to use the funds at his command to support education for the poor. He has instituted what is in effect a private tax system that skims 7.5 percent of the income from all parishes and spreads most of the take to inner-city parishes with schools; over the past five years that Robin Hood process has meant a redistribution of $12 million in Catholic wealth. But all this money stays within the system. The idea of giving up a Catholic school to secular control, while paying out Catholic dollars for the privilege, went a step too far.

But CORE and the parents refused to give up. They found new quarters for the school—known now as CORE Community School—in the Gramercy Boys' Club, three short blocks away. Though the teachers at Victory were offered new jobs within the archdiocesan system, all chose instead to sign up for a risky future with CORE, and all have spent the better part of the summer working with volunteer parents painting, patching, plastering, and replumbing the building, all without pay. Against all odds, some 180 pupils have pre-registered for the new school term, and Ed Callahan, who will be principal, says the school will open with a splashy press conference September 7.

Though he wouldn't go the last mile with Victory parents, Terence Cooke has done surprising things to help financially troubled parochial schools in New York City. There was a rumor, for instance, that late last year he carved up a meaty money pie among distressed parishes of his ten-county domain. I told a spokesperson for the archdiocese that the rumor was going to be printed; could it be confirmed? Reluctantly, yes. The amount, gathered "over a period of years," was $9 million. The donors were anonymous, and would stay that way. But the purpose, said the spokesperson, was no secret. "Overwhelmingly," the money went to keep schools going that would otherwise have had to close.

Cooke's sharing of dollars contradicts well-established precedent. Always in the past, parochial schools have survived by their own efforts or not at all. If bingo and bake sales didn't bring in enough to supplement school tuition and Sunday collections, that was the beginning of a sure end.

More significant than the innovation itself, however, is the judgment it revealed. Five years ago only a bishop willing to trust in incantations (which doesn't describe Cooke) would have risked hard-garnered capital on the future of Catholic education. Nuns were leaving their classrooms in herds; costs were shooting up; enrollments sagged dangerously; and morale was bad.

Today the figures speak otherwise. Of the 368 Catholic grade and high schools that operated last year in the New York archdiocese, all but five will be alive and functioning this year—and (except for Our Lady of Victory School) most of the students in the failing ones are already enrolled in other Catholic schools. Between 1971 and 1972, grade-school enrollment dropped a dismaying 6.2 percent; between 1975 and 1976, only 2.5 percent. Applications to Catholic high schools actually went up this past spring.

Terence Cooke's school policy does not fully explain these developments. Despite his infusions of cash, it costs parents more than ever before to patronize Catholic schools. Even in poor neighborhoods, in schools that certainly shared in Cooke's largess, average tuitions are $350 a year, and they can run as high as $600 per family—and higher still for children who aren't Catholic, or who come from outside parish boundaries.

Of the 18,421 students enrolled in the 47 inner-city Catholic grade schools in Manhattan last year, 14,369, or 78 percent, were from minority groups: blacks, Hispanics, Orientals, American Indians, "others." In 64 of the 77 inner-city parochial schools in Manhattan and the Bronx, the archdiocese describes the school populations as 50 percent or more "culturally deprived," meaning, in almost all cases, certifiably poor. In 36 of the 64, the proportion goes above 85 percent. What the parents of these pupils have to pay has to be hurting them. Yet it is basically their decision, not the cardinal's, that keeps the schools in action.

By tradition, it might be assumed that these are parents fighting to pass the faith on to their children. Not so; many aren't even Catholic. The diocese estimates that 77 percent of all their pupils come from Catholic families, but there's reason to believe that such numbers wildly overstate the Catholic proportion. "You never tell the chancery office the truth in such matters," says Chicago's Father Andrew Greeley, a sociologist whose research has uncovered similar conditions in other U.S. cities.

It seems appropriate at this point to declare my own bias, since much of the balance of this piece rests on personal observation and judgment. I spent sixteen years undergoing Catholic education, four more years dispensing it in a Jesuit high school. Because it shaped me, down to my use of semicolons, I have a prejudice in its favor. But since the process also inflicted certain unforgiven scars on my psyche, I have a bias against the system as well.

According to Professor Thomas Vitullo-Martin of Teachers College, Columbia, recent research indicates that, especially in low-income areas, Catholic education has strong positive impact on academic and career succes. Other studies show that, throughout the country, it has relatively slight effect on religious practice and belief. There is even some evidence that students who spend enough time in Catholic schools emerge better armored than their Catholic friends in public schools against such intellectual offenses as the present pope's birth-control encyclical. It isn't clear why; maybe a surfeit of religion inoculates the future adult against the abuses of religious authority.

There is a prima facie case against the thesis that Catholic schools do a good job of educating children; by current standards, it seems, they cannot afford to provide even minimal education. Last January, Monsignor Feeney reported to the National Catholic Education Association a 1975–76 enrollment of 104,361 in the 268 elementary schools of the archdiocese. He also reported total operating costs for these schools at $48,245,404.22, leading to an annual per-pupil cost of $462.29. I could not get a strictly comparable figure from the New York City Board of Education; the best they could come up with, after rooting through misplaced files, was a per-pupil cost for the whole system. The figure is—hold your wallet—$2,647.

Both per-pupil-cost figures are open to question. Public-school teachers have told me, for example, that the "average daily attendance" is, in fact, an inflated figure which includes sizeable numbers of pupils who are long gone; this means the real school population is lower and the per-pupil cost higher than the official figures. In analyzing the Catholic cost figure, some allowance has to be made for contributed services. Salaries are lower not only for nuns (30 percent of the teaching staff) but also for lay teachers. In many schools women parishioners serve as teachers' aides without pay; in some, men do custodial work for free.

Hard data on the effect of these factors would be hard to get. It is still clear, however, that by parochial-school standards the Board of Education is lushly funded. The raw cost ratio between the two systems is nearly six to one. Allowing for contributed serives, for the cost of services supplied to parochial-school students out of the public-school budget, and for the difference between grade-schools and high school costs, it comes out that the parochial-school child is educated at a cost one quarter to one third the cost of educating the same child in a public school. According to Professor Vitullo-Martin, the gap is greater in some other cities where for every $1 the parochial school spends on one child the public system spends $8.

What about performance? What Victor Solomon discovered about the educational effectiveness of Our Lady of Victory is not rare; it's standard, not only in New York City but across the country. Comparison of standard test scores reveals that children in Catholic iner-city schools generally score higher on these tests than do children in public schools in the same neighborhoods.

Before I began my research, I though I knew, partly from logic, partly from my own experience, why parochial pupils excel. I reasoned that Catholic schools can teach because they can keep orders, and they can keep order because they can get rid of their problems. Then I visited St. Bernard's School, a gray, cavernous structure on West 13th Street. "I haven't dismissed a child in fourteen years," said Sister Mary Alphonsus Crimmins, the school's principal.

"There is no corporal punishment here. We do not keep children after school."

Sister Alphonsus is 70 years old, wears the traditional habit and thick glasses, has been a nun 54 years, and is energetic enough to tire an interviewer. The way pupils approached her while we talked made her entirely credible when she explained her system: "What we have is discipline without fear. Watch the children; they come and kiss me on the street. And we have the parents with us. They want what we want."

Her desk was piled with test scores just back from Science Research Associates (SRA), a national testing agency that serves the archdiocese. Sister picked up a stack at random and let me copy the SRA scores. I noted composite results for reading, language arts, math, etc., on tests taken by a class of seventh-graders in the sixth month of the school year. The national norm then was 7–6; a child scoring 8–6 is handling seventh-grade materials with the facility of an eighth-grader at the same point in the school year; a child scoring 6–6 is a year behind. These are the first fifteen scores I listed: 12–9, 10–1, 9–2, 8–4, 7–7, 10–5, 7–2, 6–6, 9–1, 10–1, 6–1, 6–7, 9–4, 10–4, and 11–7. In the meantime Sister Alphonsus chatted on happily about her reading lab, her library (4,200 books), her teaching methods (electric), the science-lab equipment, the field trips, the karate club, and about Arnold Falcone, the eighth-grader who had just taken first prize in a citywide essay contest.

Well, if the school doesn't kick out problem kids or flunk out slow learners, maybe it doesn't let them in—selective admission? Hardly. St. Bernard's sits between Eighth and Ninth avenues in the midst of warehouses, meatprocessing shops, and factories. The school office lists 87 percent of the student body as "culturally deprived"; 89 percent, according to the school, are Hispanic; some speak little English when they arrive. Yet the school doesn't ask for Title I (tax-paid) remedial teachers; it doesn't have enough students far enough below grade level to qualify. "Why don't you cheat a little?" I asked. "I understand it's been done." Sister Alphonsus grinned. "I can't do it. Its my background."

On the phone, Sister Elaine always sounds exhausted; in person, she's lively and relaxed. She is 36, of Irish and Lithuianian descent, and has been principal of St. Brigid's for ten years. In that time she has taken in a number of students who couldn't make it in public school. She, too, has yet to dismiss a student. I asked her about "Tom," a boy who was headed for a public school disciplinary class or special school when he was brought to St. Brigid's. He had thrown a movie projector during a film in his school's auditorium. Why was he taken in?

"It was a hunch, really. Well, no I liked the kid. He was gutsy. He knew what he liked and didn't like, and he'd say it. And he had a sense of humor. I think his trouble was that he'd got slotted with a bunch of acting-out kids."

St. Brigid's is a haven. The kids don't look culturally deprived to me. They look happy and purposeful. They ask confidently for what they want, they move around without confusion, they smile when smiled at. I wouldn't need test scores to know it's a successful school. I asked Sister Ealine why.

To her, small is beautiful in schools. "You know, with Puerto Ricans it's a special cultural thing; the children just cannot get oriented in the big schools. When they're little they're just very terrified and lost."

With a small school, principals and teachers know a lot about every child and about the child's family. Sister Elaine picked up a class roster and commented on the family situation of each of the 34 children in the class. Thirteen of them she dismissed as "stable" or "okay." The rest of the list was terrifying:

"Father O.D.-ed. The mother left the home when the child was three days old. The grandparents are doing their best. Very poor."

"This family is stable, but the mother is in a very deep depression. Just got out of Bellevue. They're going to Puerto Rico this summer to see if it will help."

"The mother's a junkie. Grandmother's a lovely old lady. I can always tell when the kids have been with the mother—they're dirty and sleepy."

"Both parents drinkers. The kids are undersized and nervous."

"This child's dreadfully asthmatic—it kills you."

"These two got married at sixteen and now they have four boys, one in second, one in first, one in pre-kindergarten, and a two-year-old. They're trying, but it's too much."

"Four surnames in this family. But the mother has overcome tremendous difficulties. She's going to college."

I asked Sister Elaine again why St. Brigid's children learn. "Because they know I'll wring their necks if they don't!" Sister Elaine tried to look fierce. "Well, no, but there's a mystique that I might. Really, we push, we push hard. We have a strong belief they can make it. They need it; it's all they've got."

St. Charles Borromeo in Harlem is not much like St. Brigid's or St. Bernard's. It's a big rectangular box on West 142nd Street, so spick-and-span (not a graffito in sight) that it looks almost out of place in the neighborhood. I got there just after the school day closed. The halls were waxed and polished. The rooms—except for a few where children in neat uniforms were still working—were totally in order.

Discipline at St. Charles is tight, as far as I can learn, and there is a strong, explicit emphasis on religion, though four out of ten children are non-Catholic. A few days earlier I had talked with a Protestant mother whose son is now enrolled in the school and whose daughter had become a Catholic while a student there. "I didn't mind," she said. "I'm happy to be a Baptist, but she's a big girl now, that's her choice. And I certainly respect Sister Irene."

Sister Irene Ryan is a new principal, a little shy about talking with reporters but clearly a strong woman with settled views. She is sure the school is fulfilling its mission. The enrollment includes 489 blacks, 40 Spanish; the diocese classifies 95 percent as "culturally deprived." Yet there are no Title I teachers—"there is no call for it." Sister Irene credits parental support, a dedicated faculty that is racially integrated and religiously mixed, and the school's philosophy of self-discipline: "We talk about leadership a lot, and about self-control. It's not 'Irene-control.' I don't want them worrying whether Irene is coming down the hall. The only discipline worth having is the power to control your own powers."

The point of my investigations was to try to find out why the schools work. One reason is autonomy. The New York Catholic schools I visited all were wildly different from one another—in looks, style, atmosphere, ideas about education, and (not least) attitudes toward Catholicism. This heterogeneity comes about because the Catholic school system is not a system at all but a rather loose confederation of highly independent units. There is no giant bureaucracy to force them into uniformity. At the superintendent's office I got one sheet of paper listing the names, titles, and staff relationship of all the professional educators who work directly under Monsignor Feeney—all 25 of them. Since there are about 150,000 pupils in the New York Catholic schools, there is one central-office administrator for every 6,000 students. Consider that the New York City public-school system enrolls about 1,055,000 students, and that (as the papers keep reporting) there are 4,000, 5,000, or maybe more people in the system with administrative jobs. Say it's 4,500; that would mean one administrator for every 234 students.

These figures are for playing with. Suppose the 4,500 public-school administrators get an average annual salary of $15,000; that's $67 million to start with, and you still haven't provided them with desks, paper clips, and health insurance. In contrast, the Catholic central office estimates its annual operating cost at

$250,000. What this suggests is that a lot of money spent for educational administration may not bring much in the way of educational results. It doesn't seem out of line to surmise that these administrators are damaging education rather than helping it, simply by getting in each other's way and by coming between principals and teachers and students, between parents and the whole system. Catholic schools may look hatefully autocratic, and sometimes they are; at least you know whom to hate. In short, the Catholic schools are genuinely decentralized, and this is one reason for their relative success. Whatever may be lost in particular kinds of expertise is more than made up for by gains in flexibility, accountability, and time to teach.

The other obvious source of Catholic schools' success is the parents, or, more precisely, the relationship between the parents and the schools. Parents who pick a school will follow up their investment, identify with the school, and try to help their children learn. A recent study done by David Morton, a University of Rhode Island researcher, for the Rhode Island Department of Education (which wanted to find out why parochial-school pupils were doing better than their public-school counterparts) established that parochial students do get more parental help on the average.

[From the New York Times, Jan. 11, 1978]

NEW YORK SCHOOL READING LEVEL STILL LOW

60 PERCENT OF PUPILS AT OR NEAR NORM

(By Edward B. Fiske)

Six out of 10 students in public elementary and junior high schools in New York City are reading at or below the national average, according to last spring's reading tests, the Board of Education reported yesterday.

The results also showed that in the early elementary grades pupils in the city schools were reading at—and in some cases slightly above—the national average, but that after the fourth grade their performance declined sharply.

This is a pattern that has shown up frequently throughout the country, especially in large urban school systems, and that has become a subject of considerable debate among educators.

One frequent explanation is that compensatory reading programs, such as federally financed Title I efforts in New York and other large cities, have succeeded in their goal of increasing academic performance among underachievers in poor areas.

DECISION OF SCHOOL DISTRICTS

"Most community school districts make the decision to apply these funds in the early grades," said Charles I. Schonhaut, senior assistant to Chancellor Irving Anker.

In announceing the results, Chancellor Anker noted that New York City public school pupils "scored within 10 percent of the nationwide expectancy."

Mr. Anker also sent an open letter to Mayor Koch yesterday asking him to review the unwarranted attacks on our public schools system and its leadership." [Page B6.]

The data released yesterday reported that 40.1 percent of students were reading at or above grade level. These results are roughly the same as the scores last year, when 42.6 percent of students were described as reading at grade level. However, precise comparisons cannot be made, because a new test was introduced last spring.

Reading tests are administered to all children in grades two through nine in the city's elementary, junior high and intermediate schools, partly as a guide to educational policy-making but also in compliance with the Community School District Act of 1970.

The decentralization law requires a yearly ranking of schools in terms of the percentage of their students reading at or above grade level. It also provides that schools with poor results in reading—defined as the lowest 45 percent of schools tested—can choose teachers outside of the normal seniority lists.

Reading tests are normally administered in March, but last year's program was delayed by the courts until May by allegations that teachers in several districts had obtained copies of the test and drilled students on them. As a result of these allegations, students in District 6 in Washington Heights and District 25 in Queens were given an alternative form of the test.

Mr. Anker said that the use of an alternative form by some students had had "no effect" on the results either for those two districts or the system as a whole.

The results released yesterday showed that 40.1 percent of the 515,634 students in grades two through nine who had been either tested or excused because they were non-English-speaking were reading at or above grade level. If non-English-speaking students are not included, this figure rises to 42.5 percent.

TESTS ARE CHANGED

During the 1974–75 and 1975–76 school years, the percentage of students at or above grade level was 45.2 and 42.6 percent respectively. Direct comparisons between these figures and last spring's results are impossible because in the two earlier years the board used the Stanford Achievement Test, published by Harcourt Brace Jovanovich, but last year it switched to California Test of Basic Skills, published by McGraw-Hill.

The change was made because of a decision to open the selection to competitive bidding and not to go to the added expense of using a "secure" test, that is, one that had never been used elsewhere. Plans for this year's testing program call for using a secure version of a McGraw-Hill test that, the publisher says, will permit direct comparison with last spring's results.

The results released yesterday also showed that, on the average, pupils in the three lowest grades were reading at or above the national average. The scores for grades two, three and four were 2.8, 4.0 and 5.0 respectively. Since the tests were administered in the eighth month of the school year, the national norms for these grades would have been 2.8, 3.8 and 4.8 respectively.

However, beginning with the fifth grade, the scores begin to drop below the national average by increasing amounts. The scores for grades five through nine were 5.7, 6.4, 7.1, 8.1 and 9.2 respectively. The national averages for these grades were 5.8, 6.8, 7.8 and 9.8.

This pattern of high scores at the lower grades and lower ones at the upper elementary level is one that has been noted elsewhere across the country in recent years.

"We're finding it all over the place," said Roger Farr, a reading specialist at the Indiana University, "but it's especially pronounced in the inner cities. We reviewed the scores in Cleveland two years ago, for example, and found that once you get above fourth grade the number of kids reading at grade level begins to decline. By the time you get to high school, you have a large number below the national average."

Educators also note that a major shift occurs at about the fourth grade level in the content of reading instruction. In the early school years, reading instruction consists primarily of teaching students to read words, they already know by sound. "You're essentially substituting written language for oral," said Thomas G. Sticht of the National Institute of Education.

Beginning in the upper elementary grades, the task becomes considerably more difficult, and students begin to encounter words and ideas they do not already know "It's the difference between learning to read and reading to learn," Mr. Sticht said.

HOW "GRADE LEVEL" SHOWS PERFORMANCE

"Grade equivalent" or "grade level" is used to show a student's performance in relation to a national norm, i.e., in relation to that of other students.

Manufacturers will give the test to a sample of students in the grade for which the test is intended and also to a similar sample in one or two grades above and below. The median scores for each grade will then be plotted on a graph, and each possible test score will then be assigned a grade equivalent depending on the slope of the line.

Scores within a year or so of a child's actual grade level can be assumed to have some relation to his or her actual reading level. Thus a fourth-grader who receives a score of 5.4 can probably read as well as most fifth-graders.

A LIST OF KEY FINDINGS OF READING

The following tables summarize some of the key findings of the reading achievement tests given in May 1977, as reported by the New York City Board of Education.

Schools are ranked within each school district an the basis of students performances on the test. The percentages show the proportion of pupils in each school reading at or above their grade level. Schools in which more than 10 percent of the pupils are non-English-speaking are marked by asterisks (*).

The next column lists each school's rank within the city as a whole. The elementary schools are ranked from 1 to 629, and the intermediate/junior high schools from 1 to 177.

Under state law, schools in the bottom 45 percent of the ranking list are eligible, in normal times, to hire teachers from outside the normal Civil Service process. These schools are listed below a line on the tables.

The final column shows the median scores for pupils in the fifth grade in elementary schools, and the eighth grade in intermediate or junior high schools. Median means that half the students were above the score listed, and half were below it.

Since the reading tests were given in May, the eighth month of the school year, the expected average score for students in grade 5, for example, would be 5.8. Therefore, according to the designers of the test, a fifth-grade pupil who scored 5.0 would be eight months behind the national norm.

	Percent	Rank	Median score
MANHATTAN			
District 1			
Elementary school (grade 5):			
19	42.0	299	4.7
61	37.4	345	5.0
110	32.5	390	4.7
140	31.2	405	5.3
137	30.5	418	4.6
134	27.7	456	4.5
20	27.1	466	5.2
97	24.1	503	4.7
34	23.5	513	4.5
63	22.0	532	4.3
188	18.7	576	3.9
64	16.5	601	4.3
142	16.0	608	4.1
15	5.6	629	3.8
Junior high school (grade 8):			
56	30.3	89	5.9
22	15.9	155	5.9
60	14.3	161	6.4
71	8.5	76	6.0
District 2			
Elementary school (grade 5):			
158	82.7	10	7.5
6	80.0	21	8.5
183	77.3	35	6.4
40	75.9	46	7.4
217	73.4	56	8.0
41	72.3	63	7.5
26	72.1	65	7.4
3	70.2	77	7.5
59	69.2	86	7.2
190	68.0	94	6.9
198	46.9	251	5.6
124	44.7	275	5.8
33	41.7	301	6.1
116	40.4	308	5.4
1	39.4	314	5.6
2	39.3	316	5.4
151	33.5	384	4.9
11	31.8	400	4.8
130	30.8	413	5.2
126	30.1	426	4.8
111	26.1	482	4.8
42	22.8	520	5.2
51	14.5	617	4.1
Junior high school (grade 8):			
217	80.7	2	11.5
104	60.3	27	10.0
167	57.9	33	9.7
70	48.9	47	9.0
65	36.8	76	8.4
17	*29.7	92	7.6
District 3			
Elementary school (grade 5):			
75	59.2	167	7.7
166	56.9	180	6.2
87	56.5	184	6.2
191	50.5	217	--------
84	44.5	278	6.5
180	43.8	287	5.3
185	38.6	328	--------
199	30.7	414	5.1
9	29.1	444	5.6
203	27.2	465	4.3
145	27.0	467	5.0
76	26.9	472	4.9
144	25.4	490	4.3
163	22.5	522	4.9
113	19.1	571	3.4
149	17.3	596	--------
165	16.8	599	4.5
179	16.5	602	3.8
207	13.9	621	4.4
Junior high school (grade 8):			
44	*44.5	60	8.8
88	18.8	129	6.8
54	*16.5	149	6.9
118	16.2	151	6.9
District 4			
Elementary school (grade 5):			
112	47.7	246	--------
57	31.1	407	4.9
96	27.4	459	4.5
100	27.2	462	4.8
50	26.2	480	4.1
72	25.4	488	4.4
171	25.4	489	4.8
7	20.8	546	4.6
206	20.1	561	4.3
101	19.6	568	4.4
109	18.9	573	4.5
146	18.6	580	4.4
121	18.1	585	4.5
108	17.5	591	4.3
155	17.3	595	4.4
83	16.1	607	4.5
Junior high school (grade 8):			
13	22.1	111	6.6
45	21.6	117	6.8
17	12.0	172	6.3
99	*11.4	173	7.1
District 5			
Elementary school (grade 5):			
129	45.9	256	5.7
136	45.6	259	--------

	Per-cent	Rank	Median score
MANHATTAN—Continued			
District 5—Continued			
Elementary school—Continued			
—	44.6	276	5.5
290	41.3	302	4.9
154	39.3	318	5.1
46	37.0	343	4.9
197	33.6	382	5.2
36	31.5	403	--------
79	26.3	479	4.5
31	25.1	495	--------
123	23.7	508	4.4
92	23.6	511	4.3
133	22.5	523	4.8
175	21.9	534	4.3
161	21.8	536	4.3
194	14.8	614	4.7
Junior high school (grade 8):			
195	30.0	91	7.7
136	23.4	106	7.6
10	20.3	125	6.9
201	18.9	128	6.8
43	18.4	136	7.1
District 6			
Elementary school (grade 5):			
187	58.6	174	6.1
173	35.9	364	5.8
152	31.1	410	5.2
189	29.9	431	5.2
28	26.6	474	4.7
128	26.3	478	4.8
132	25.7	484	4.6
115	25.2	492	4.5
153	23.3	515	4.2
98	22.0	531	5.6
192	16.4	603	4.8
Junior high school (grade 8):			
187	55.8	36	9.6
143	*23.8	103	7.3
164	*14.7	160	9.2
BRONX			
District 7			
Elementary school (grade 5):			
31	47.2	248	5.6
161	34.1	378	6.1
1	30.3	423	4.7
156	25.7	486	4.4
49	25.5	487	4.5
157	24.7	497	4.7
154	24.2	501	5.1
124	21.2	544	4.7
5	20.6	552	4.3
29	18.6	579	4.1
27	17.6	586	4.3
18	17.4	594	4.3
30	16.4	604	4.3
65	16.3	606	4.0
43	14.6	616	4.0
40	12.2	624	4.5
25	10.1	626	4.8
Junior high school (grade 8):			
149	41.6	67	9.0
151	18.5	135	6.9
184	*17.2	147	6.6
162	16.1	153	6.4
155	*15.4	158	6.3
183	15.3	159	6.9
139	13.7	164	6.3
District 8			
Elementary school (grade 5):			
71	66.3	109	6.8
14	56.2	190	5.8
72	49.0	231	5.6
100	45.5	262	--------
93	40.3	309	--------
138	37.2	347	--------
107	35.9	365	5.4
152	35.8	366	5.4
119	33.8	381	5.4
146	31.1	408	5.0
69	30.9	412	--------
140	29.1	443	5.0
48	26.4	477	--------
62	23.2	519	--------
130	20.6	550	4.7
36	19.0	572	4.3
39	15.3	611	4.7
75	12.4	623	3.6
60	9.1	627	3.9
Junior high school (grade 8):			
192	51.6	41	9.1
101	43.7	63	8.4
125	37.8	73	8.2
131	29.3	93	7.8
174	28.5	97	7.7
120	23.4	105	7.4
123	20.0	126	7.5
75	*17.8	140	7.2
52	*15.5	157	6.6
District 9			
Elementary school (grade 5):			
2	32.2	398	4.5
110	40.6	306	--------
2	30.6	415	5.1
132	29.5	439	4.7
35	29.2	442	--------
11	26.9	469	--------
70	26.9	470	4.3
163	26.6	473	--------
88	25.1	496	--------
114	24.3	499	5.4
28	24.1	504	4.8
58	23.2	518	4.9
104	22.4	526	4.5
53	21.4	543	4.7
126	20.7	547	4.5
09	20.3	557	4.2
90	20.2	559	4.5
64	19.4	569	4.6
55	18.6	582	4.3
42	18.3	583	4.8
73	17.9	588	4.7
235	17.5	592	2.9
163	14.8	615	4.0
4	14.2	619	4.5
Junior high school (grade 8):			
166	25.3	102	7.5
145	*23.7	104	8.1
148	22.0	112	7.1
123	20.7	123	--------
117	*18.7	131	7.5
147	*18.6	134	6.6
82	17.6	142	5.7
22	*16.0	154	6.9
District 10			
Elementary school (grade 5):			
24	84.2	6	9.1
81	81.6	14	7.7
95	60.9	150	6.3
80	54.9	196	5.4
7	49.3	228	5.7
94	45.9	255	5.6
8	45.1	269	6.1
56	43.3	291	5.6
122	37.7	337	5.4
33	31.5	402	4.9
46	30.4	421	5.1
86	28.6	450	4.7
379	24.3	500	4.1
32	23.9	505	4.8
25	23.5	514	4.3

	Per-cent	Rank	Median score
BRONX—Continued			
District 10—Continued			
Elementary school—Continued			
85	22.8	521	4.3
91	20.4	555	4.1
205	19.6	567	....
915	18.1	586	4.5
59	18.1	587	4.5
Junior high school (grade 8):			
141	61.5	22	9.7
143	33.8	81	7.7
80	32.1	86	7.4
45	21.6	116	6.8
137	*18.0	139	6.8
115	17.4	146	7.2
118	*13.7	163	6.8
District 11			
Elementary school (grade 5):			
999	76.2	44	....
97	70.1	80	6.4
175	65.1	116	5.7
96	64.1	122	6.8
89	63.5	128	7.4
73	60.5	155	6.2
108	60.2	159	6.5
83	57.9	177	5.6
19	57.1	179	5.8
87	51.8	212	5.9
76	50.6	216	5.9
106	50.2	221	6.0
105	49.6	226	5.7
16	49.0	232	5.6
41	45.4	265	5.6
121	45.2	267	5.6
68	45.0	271	5.6
103	44.9	273	5.6
111	34.0	380	5.3
21	33.2	385	5.5
112	32.3	396	5.1
Junior high school (grade 8):			
999	61.3	24	9.6
135	48.8	48	9.0
144	47.3	50	8.3
127	44.5	59	8.6
113	37.3	75	8.3
142	35.7	78	8.2
District 12			
Elementary school (grade 5):			
102	34.5	376	5.1
47	32.5	392	4.9
150	32.0	399	5.7
77	30.1	425	5.0
61	23.6	510	4.3
44	22.1	530	4.4
6	22.0	533	4.7
57	21.5	542	5.1
129	20.1	560	4.7
234	20.0	562	....
134	19.9	564	4.3
211	19.7	566	4.3
99	18.7	575	4.7
92	18.6	581	4.9
67	17.2	597	4.5
66	17.1	598	4.3
50	16.6	600	4.6
198	14.9	613	4.3
Junior high school (grade 8):			
167	20.9	122	6.9
158	18.3	138	6.8
193	*17.4	145	7.2
136	*12.8	169	6.3
116	*12.3	171	6.9
98	*10.3	174	6.3
84	*7.9	177	6.1

	Per-cent	Rank	Median score
BROOKLYN			
District 13			
Elementary school (grade 5):			
8	62.7	136	5.4
270	39.3	315	5.0
11	38.7	326	5.6
20	37.4	344	4.9
44	35.5	369	5.2
256	35.4	370	5.6
93	33.6	383	4.7
282	32.4	393	4.7
307	32.3	395	4.9
3	30.4	420	4.1
305	30.3	422	4.1
9	30.2	424	5.1
46	29.9	430	5.5
287	29.8	433	4.4
56	29.1	445	5.0
133	28.7	447	5.8
54	20.6	551	4.5
67	20.5	553	4.0
Junior high school (grade 8):			
117	22.5	110	7.2
294	20.6	124	6.9
258	16.2	150	6.6
265	13.7	162	6.8
District 14			
Elementary school (grade 5):			
18	46.1	254	5.4
31	45.6	261	5.4
132	42.8	294	5.1
297	42.8	295	5.5
250	38.5	330	5.6
147	38.3	331	5.2
59	37.7	338	5.1
110	35.2	372	5.3
34	34.1	379	5.0
168	31.1	409	5.0
257	30.5	417	5.3
16	29.7	435	5.1
122	29.7	437	—
196	27.8	454	4.1
157	27.6	457	4.8
120	23.7	509	4.7
23	22.4	525	4.0
17	21.8	537	5.0
84	20.6	549	4.5
19	20.4	556	4.9
Junior high school (grade 8):			
126	35.1	79	8.1
318	22.7	108	7.4
71	*18.8	130	6.8
33	*18.7	132	6.3
49	*13.7	165	6.8
50	12.3	170	6.8
District 15			
Elementary school (grade 5):			
130	48.6	236	5.8
230	47.9	242	4.8
321	47.7	245	5.6
39	45.8	257	5.5
29	43.9	292	4.8
154	42.7	297	4.8
107	39.3	317	4.7
58	39.2	321	5.6
32	39.1	322	6.1
131	38.7	327	5.2
169	36.7	535	5.0
94	35.9	362	5.4
124	33.2	386	4.9
10	30.1	427	4.8
172	29.2	441	4.8

	Per-cent	Rank	Median score
BROOKLYN—Continued			
District 15—Continued			
Elementary school—Continued			
38	28.6	449	5.0
261	27.9	453	4.8
27	27.8	455	4.4
15	25.7	485	4.8
1	19.3	570	4.3
Junior high school (grade 8):			
88	28.0	99	7.1
51	27.0	101	8.0
293	21.4	119	6.8
136	*19.2	127	6.3
142	15.6	156	6.4
District 16			
Elementary school (grade 5):			
40	54.1	198	6.2
335	48.1	239	5.1
262	38.8	324	5.3
25	38.8	325	5.4
21	38.1	333	5.1
243	36.6	356	5.6
308	32.8	387	4.4
26	29.8	432	5.1
309	29.7	438	4.6
81	28.7	448	4.8
5	27.3	461	4.5
304	27.2	463	4.8
28	22.5	524	4.9
83	6.0	628	--------
Junior high school (grade 8):			
35	28.5	96	7.5
57	13.6	166	6.4
District 17			
Elementary school (grade 5):			
91	53.3	203	5.9
241	48.5	237	5.8
397	47.3	247	5.9
181	45.4	263	5.2
61	44.3	282	5.3
189	40.9	304	5.3
289	38.1	334	5.0
221	37.9	336	5.3
249	36.6	355	5.3
92	31.4	404	5.2
167	30.6	416	4.8
316	27.4	460	4.7
138	26.5	475	4.3
191	25.2	494	4.8
Junior high school (grade 8):			
320	28.6	95	7.5
391	28.4	98	10.5
246	27.6	100	7.2
61	21.4	120	6.9
210	18.3	137	6.6
District 18			
Elementary school (grade 5):			
110	32.5	390	4.7
115	81.8	12	7.4
276	80.3	19	7.3
279	73.8	54	6.8
272	71.8	68	7.4
208	68.8	90	6.9
114	63.9	124	6.1
242	54.2	197	6.0
235	50.3	219	5.9
244	45.0	270	5.3
233	44.8	274	5.8
268	40.8	305	5.6
135	39.3	319	5.4
219	34.6	375	5.2
Junior high school (grade 8):			
137	30.5	418	4.6
68	61.2	25	9.8
211	57.9	32	9.6
285	41.1	69	8.7
232	29.0	94	8.0
252	23.0	107	7.2
District 19			
Elementary school (grade 5):			
346	60.3	158	6.0
273	47.7	244	5.6
306	45.4	264	5.3
65	39.2	320	5.4
260	36.0	360	5.2
71	32.5	391	5.1
213	32.4	394	4.7
159	29.9	429	5.0
108	28.0	452	6.1
214	26.5	476	4.8
224	25.3	491	4.9
202	24.2	502	4.8
76	21.5	541	4.3
345	21.2	545	4.2
190	20.4	554	4.1
149	19.7	565	4.3
72	18.8	574	4.5
13	18.2	584	4.3
174	17.5	590	3.8
63	17.4	593	4.1
158	15.7	609	3.6
328	14.3	618	3.9
Junior high school (grade 8):			
364	44.0	61	8.3
166	32.4	84	8.1
171	30.0	90	7.4
218	21.6	115	6.9
302	17.5	144	7.1
292	*13.3	168	6.1
District 20			
Elementary school (grade 5):			
127	71.4	70	6.3
247	70.2	79	6.8
102	67.4	99	6.3
104	67.1	102	6.8
229	64.6	119	6.3
48	64.1	123	6.5
112	63.8	125	6.5
170	62.4	137	6.8
204	60.1	161	6.3
200	60.0	162	6.5
205	56.4	187	5.9
160	55.9	191	6.1
186	53.4	201	6.2
185	51.7	213	6.4
105	49.9	223	5.6
176	49.3	230	6.0
180	48.5	238	6.3
163	46.5	252	5.6
179	46.3	253	5.3
192	45.6	260	5.6
164	45.6	260	5.6
164	32.6	389	4.3
140	31.1	411	4.7
Junior high school (grade 8):			
259	51.7	40	9.3
201	50.8	43	9.1
62	45.8	54	8.3
227	42.7	64	8.1
223	38.6	72	7.3
220	30.8	88	7.3
District 21			
Elementary school (grade 5):			
209	72.4	62	6.4
100	69.4	84	7.5
226	65.4	114	6.4
177	63.2	132	6.4
97	61.9	141	6.4
216	61.1	146	7.1
101	59.1	169	6.2
215	58.9	171	6.0
199	58.7	173	6.4
153	56.5	183	5.3
238	56.3	189	6.5
99	53.6	200	6.5

	Per-cent	Rank	Median score
BROOKLYN—Continued			
District 21—Continued			
Elementary school—Continued			
121	52.6	207	5.7
128	49.8	224	5.9
253	49.7	225	6.4
225	47.9	240	6.4
212	40.2	310	5.6
95	40.0	312	5.3
188	37.5	342	5.4
90	36.7	352	5.4
243	36.0	361	5.1
329	23.5	512	4.8
288	23.2	517	4.5
Junior high school (grade 8):			
239	91.1	1	10.9
43	47.5	49	8.7
96	45.4	55	8.7
303	44.7	58	9.0
231	41.6	68	8.6
223	39.5	71	8.2
District 22			
Elementary school (grade 5):			
312	83.4	7	7.1
236	83.1	8	7.7
251	82.9	9	8.3
195	76.5	41	8.4
203	72.5	61	6.4
207	72.1	66	7.7
197	69.2	85	7.4
222	67.3	100	7.1
119	66.6	104	6.8
206	66.3	108	6.5
194	65.8	111	6.8
277	64.2	121	6.2
193	61.5	142	6.0
52	61.4	143	6.5
254	59.2	168	6.2
255	56.6	182	6.0
217	55.8	192	6.3
198	55.6	193	5.9
152	48.9	234	6.0
139	47.8	243	5.7
269	37.5	343	5.4
Junior high school (grade 8):			
73	65.6	15	10.0
234	64.6	16	10.2
14	61.5	21	9.8
260	59.6	28	9.6
278	59.3	29	9.6
District 23			
Elementary school (grade 5):			
327	35.6	368	5.1
137	34.1	377	5.1
165	29.9	428	5.5
184	23.8	506	4.5
278	23.3	516	--------
41	22.2	527	4.8
183	22.2	529	4.5
155	21.8	538	4.5
284	20.7	548	4.3
150	20.3	558	4.3
73	18.7	577	4.0
156	15.6	610	3.7
332	15.3	612	4.3
396	14.0	620	--------
173	12.4	622	3.7
175	11.1	625	3.7
275	21.7	113	6.9
271	16.9	148	6.6
263	13.4	167	6.1
55	10.5	175	6.4
QUEENS			
District 24			
Elementary school (grade 5):			
113	84.6	5	7.7
128	73.8	55	6.8
49	68.4	92	6.4
229	67.2	101	6.8
87	62.2	139	5.9
91	60.8	153	6.1
102	60.2	160	6.9
13	53.4	202	6.4
88	52.4	210	6.1
153	51.0	215	6.0
89	49.5	227	6.2
12	49.3	229	5.7
71	48.6	235	6.2
81	47.2	249	5.3
14	45.7	258	5.5
199	45.4	266	5.9
68	39.7	313	5.5
143	35.9	363	5.3
19	28.5	451	5.3
Junior high school (grade 8):			
93	50.2	44	8.8
73	50.1	45	9.1
25	*40.9	70	8.6
61	*34.7	80	8.4
District 25			
Elementary school (grade 5):			
200	82.0	11	7.8
184	79.5	26	7.5
169	78.8	29	8.0
193	76.3	42	7.2
209	75.4	49	7.4
179	72.3	64	6.7
129	72.0	67	7.2
201	69.8	82	6.7
22	69.2	87	7.3
32	69.1	89	7.0
164	65.7	112	6.4
107	65.1	115	6.1
21	64.6	118	7.0
120	62.4	138	6.5
163	61.1	147	6.0
219	60.8	151	6.1
29	60.5	156	6.7
54	60.4	157	6.0
214	58.7	172	6.5
24	55.4	194	5.9
165	51.5	214	6.1
20	50.3	220	6.4
Junior high school (grade 8):			
25	71.2	7	10.4
194	68.6	10	10.2
185	67.4	11	10.2
237	63.1	19	9.9
218	58.9	30	8.9
168	56.8	34	9.5
189	45.4	56	8.9
District 26			
Elementary school (grade 5):			
98	81.4	15	8.1
173	81.0	17	8.3
221	79.8	24	7.5
162	79.5	27	7.4
188	78.6	30	7.9
178	78.4	31	8.5

	Per-cent	Rank	Median score
QUEENS—Continued			
District 26—Continued			
Elementary school—Continued			
191	76.9	37	6.8
26	75.7	47	7.7
177	74.3	51	7.1
203	74.2	52	6.9
115	71.8	69	6.3
133	71.0	73	6.6
186	70.8	74	6.5
130	70.8	75	6.5
37	69.8	81	6.9
203	69.7	83	6.7
46	67.0	103	6.4
159	66.5	105	7.2
94	66.4	107	7.2
213	65.6	113	6.9
41	64.3	120	7.2
18	63.1	134	5.3
Junior high school (grade 8):			
216	79.7	3	11.5
67	71.6	6	10.2
158	70.6	8	10.2
74	67.2	12	9.8
172	66.3	13	10.2
District 27			
Elementary school (grade 5):			
114	76.8	36	7.5
232	73.0	50	7.5
232	70.3	58	7.5
60	63.5	127	6.5
66	63.3	131	5.4
67	61.1	149	5.7
146	59.9	163	6.1
63	59.6	165	6.9
90	58.5	175	6.1
100	58.0	176	6.0
62	56.7	181	6.4
51	52.7	206	6.5
108	52.4	209	5.7
64	50.1	222	5.5
104	49.0	233	5.9
225	44.5	279	5.1
45	41.8	300	5.2
47	40.0	311	6.2
124	36.8	350	4.9
215	35.0	373	5.2
197	32.2	397	5.1
106	31.2	406	5.3
183	29.3	440	5.0
42	29.0	446	4.3
96	26.9	468	4.6
123	26.0	483	4.1
155	25.2	493	4.9
105	21.8	539	4.5
223	20.0	563	4.6
Junior high school (grade 8):			
202	55.8	35	9.1
210	53.2	38	9.0
180	45.8	57	8.4
53	30.8	87	7.8
198	16.2	152	6.4
District 28			
Elementary school (grade 5):			
196	79.9	23	8.2
101	76.3	43	7.5
74	75.0	50	8.3
99	72.9	59	7.1
144	72.6	60	6.9
139	68.1	93	7.5
206	63.8	126	6.7
117	63.4	129	6.9
175	63.1	133	6.3
220	59.7	164	6.3
55	52.4	208	5.6
30	44.6	277	5.7
80	43.5	288	5.5
140	38.6	329	4.8
121	36.8	351	5.3
82	36.6	357	5.6
86	35.3	371	5.2
54	34.7	374	5.5
50	30.4	419	4.9
160	29.7	434	4.5
226	45.1	57	8.4
40	26.2	481	4.6
48	22.2	528	4.3
Junior high school (grade 8):			
190	72.1	5	10.7
157	64.5	17	9.8
217	51.0	42	8.7
72	37.5	74	8.2
8	21.4	118	7.4
142	18.7	133	7.4
District 29			
Elementary school (grade 5):			
195	88.0	1	7.7
131	84.9	3	9.4
176	70.6	76	6.4
33	70.2	78	6.9
138	67.7	96	7.1
135	62.9	135	6.8
15	62.1	140	5.6
38	61.1	148	6.2
156	55.1	195	5.7
181	52.9	205	5.9
132	50.3	218	5.6
95	46.9	250	6.4
251	44.4	280	--------
136	44.1	283	5.5
36	44.0	284	5.1
118	43.5	289	5.3
34	42.9	293	5.3
37	42.7	298	5.3
134	40.4	307	5.4
52	38.0	335	5.6
35	37.6	339	5.6
116	37.5	341	4.8
147	36.3	359	5.6
Junior high school (grade 8):			
109	51.9	39	8.8
231	49.0	46	8.6
59	42.5	66	8.4
238	33.4	83	8.2
192	32.4	85	7.7
District 30			
Elementary school (grade 5):			
84	66.5	106	6.0
69	66.0	110	7.2
2	61.3	144	6.4
70	61.3	145	6.5
152	60.6	154	6.3
85	59.0	170	6.1
17	57.7	178	6.0
122	56.4	185	6.1
112	56.3	188	--------
11	53.7	199	6.7
92	47.9	241	--------
127	45.1	268	5.6
148	45.0	272	--------
151	44.3	281	5.6
76	43.9	285	5.5
150	41.1	303	5.6
171	38.8	323	4.9
166	38.2	332	5.4
149	37.3	346	5.4
111	36.6	354	4.9
Junior high school (grade 8):			
141	55.0	37	9.0
10	47.2	51	8.6
145	43.8	62	8.4
126	35.9	77	8.2
204	33.6	82	8.1

	Percent	Rank	Median score
STATEN ISLAND			
District 31			
Elementary school (grade 5):			
4	85.3	2	7.4
26	84.6	4	7.2
36	81.3	13	7.5
54	81.3	16	7.3
23	80.9	18	7.1
35	80.3	20	7.3
60	79.9	22	7.1
42	79.7	25	7.1
69	78.9	28	7.1
53	78.1	32	6.9
55	77.8	33	7.4
32	77.4	34	7.1
50	76.7	38	7.5
48	76.5	39	7.1
8	76.5	40	7.2
29	76.1	45	7.2
30	75.5	48	6.9
45	74.0	53	7.5
52	71.4	71	6.7
11	71.2	72	6.2
41	9.1	88	6.9
19	68.6	91	6.0
40	67.8	95	5.9
22	67.5	97	6.1
1	67.4	98	6.6
3	64.6	117	6.6
21	63.3	130	6.2
39	60.8	152	6.1
38	59.3	166	5.9
5	56.4	186	6.5
13	53.0	204	5.8
46	52.4	211	6.1
57	43.8	236	5.8
16	43.4	290	--------
20	42.7	296	5.6
18	37.6	340	5.1
44	37.0	349	5.7
14	36.6	358	5.2
31	35.6	367	5.1
Junior high school (grade 8):			
7	72.3	4	10.4
24	69.6	9	10.0
34	66.1	14	10.0
72	63.5	18	--------
51	62.4	20	9.7
2	61.0	26	9.5
27	58.0	31	9.5
61	46.6	52	9.3
49	42.7	65	8.0
District 32			
Elementary school (grade 5):			
299	32.6	338	4.8
86	31.7	401	5.4
274	29.7	436	4.4
151	27.6	458	4.3
75	27.2	464	4.2
123	26.9	471	3.9
106	24.5	498	4.3
145	23.8	507	4.8
384	21.8	535	4.3
45	21.6	540	4.3
377	18.6	578	4.3
116	16.1	606	4.5
Junior high school (grade 8):			
162	*22.7	109	7.1
111	21.0	121	6.6
296	17.8	141	6.8
291	*17.6	143	6.4

Senator **Packwood**. No other questions this morning, we will take up again at 2 o'clock.

[Whereupon at 12:10 p.m. the hearing was recessed, to reconvene at 2 p.m. the same day.]

AFTERNOON SESSION

Senator **Packwood**. The committee will please come to order.

We will take first, Professor Valente, whose train was delayed this morning and was scheduled to appear very early in the morning, and then we will go on with the other two panels and Mrs. Baisinger, in the order they are listed on the witness list.

Mr. Valente.

STATEMENT OF WILLIAM D. VALENTE, PROFESSOR OF LAW, VILLANOVA UNIVERSITY

Mr. **Valente**. Thank you, sir.

Senator **Packwood**. Your entire statement will be placed in the record in total.

Mr. **Valente**. I appreciate that, Senator.

I thank you for calling me despite my tardiness. First the train was late, then it was derailed, so it has been quite a day.

Senator **Packwood**. I am glad that you are here at all.

Mr. Valente. If I may, I would like to discuss the constitutional aspects of the litigation because——

Senator Packwood. All right.

Mr. Valente. I believe the merits of this legislation are very, very well known to yourself and the other cosponsors of this bill and have been uttered much more eloquently than I could in your published statements and facts.

I would like to thank the committee for the opportunity to appear before you in order to discuss the constitutional aspects of Senate bill 2142, and I am confining my remarks, Mr. Chairman, to that particular bill.

If I may start backward, in order to place my comments in the proper frame of constitutional law.

I have my own experience. I am a member of the Supreme Court Bar and Bar of the Supreme Court of Pennsylvania, the Federal courts, and I practice law in Philadelphia. I was a member of the city administration under Senator, then Mayor Clark. For the past 12 years I have been engaged in teaching and researching law at Villanova University School of Law, primarily in the field of public law, namely, constitutional law and other forms of governmental law and administrative law.

My initial comment is that any lawyer who wants to cull the opinions can find any position if he takes comments out of context.

I believe that the constitutionality of the proposed bill must be viewed in terms of the total development of the case law by the Supreme Court, and as my statement on page 12 indicates, 10 of the 12 decisions treating educational aid issues under the establishment clause have been rendered since 1971, and actually since 1968, 12 of the major 14 decisions have been rendered.

This is fresh law, it is developing law. The public school cases do not really address the point to which I am addressing myself, but these cases, including the two prior cases, the *Pierce* case and the *Everson* case, the bus case, reveal that the Supreme Court does not have any per se rule applicable to all cases of educational aid. That is crystal clear from the opinions of all the Justices, be they in the majority or dissent or concurrence parts of any one decision.

They repeatedly stated that their constitutional test in the educational environment are merely general criteria in the nature of guidelines whose real meaning comes from the policies of the religion clauses and the dangers that they are supposed to protect against.

Senator Packwood. Let me ask your opinion here.

Has the Supreme Court ever been faced with a case as broad as the issues presented in this bill, public and private schools, primary, secondary, vocational, higher?

Mr. Valente. Absolutely not, Senator. That is precisely why I want to set the frame of the background because I do think we have a fresh question here that calls for appraisal and evaluation but no mechanical or fallaciously certain answers as to constitutionality based on the precedents.

Since the *Lemon* decision, in connection with your question, in 1971, each succeeding precedent produced surprises to the lawyers and to the academicians both in the application of broad guidelines that the Supreme Court has used, and, more importantly, in the judicial alinement of the majorities in those cases.

There have been precious few decisions, even within the past 10 years, in this area in which you have had a unanimous Supreme Court, even a near unanimous Supreme Court.

No; they have continued to find themselves in some disagreement, a majority of the Justices, and I will take occasion later to provide some very recent illustrations from those whom I am sure will be quoted to the opposite conclusion, determined to limit their constitutional rulings to pragmatic judgments that are confined to statutory schemes that have been specifically presented to them.

Every one of these decisions are guarded and narrowed to the situation presented to the Court.

Now, this process, as Mr. Justice Powell declared just as recently as June 1977, the latest round of decisions, is not susceptible to "tidy conceptional analysis." I am using his words.

The Court's decisions, therefore, has not foreclosed legislative attempts to forge constitutional means to aid citizens who receive or support church-related education. Indeed, the Court has acknowledged the validity of a number of educational aids that, incidentally, aid such institutions.

I will provide specific examples of this not only at the higher educational level but also elementary and secondary levels.

To date, the Court has never—I am repeating myself, in answer to your question, but I think it is central—considered a comprehensive education incentive measure such as Senate bill 2142, which aids citizens, not institutions, which makes no distinctions, or discrimination among age groups, among parent-students, spouse, students, dependent students, among students in primary, secondary, college or vocational schools, or among beneficiaries, be they in State or private schools.

More importantly, to date the Court has not nullified any Federal legislation in the educational field. It upheld the Federal law in the only case involving an act of Congress in modern times, and that is the *Tilton* case.

If I wanted to wax historical I would cite the *Bradfield* v. *Roberts* case in which the Court upheld congressional grants to a hospital run by a religious order here in the District of Columbia at the turn of the century. It is, therefore, clear Congress can expect a very respectful judicial consideration of its constitutional judgments and the tax policy judgments of a coordinated branch in the National Government.

If I may go back very briefly to review the cases, because they do fall in groups, as a prelude to my evaluation of the constitutionality of Senate bill 2142. We have to start with the *Pierce* case in 1925, which outlawed, as you know, an Oregon statute that would have forced all parents to enroll their children in public schools; and that case has since been construed by the Supreme Court as establishing the constitutional right of freedom of choice of education in parents and immunities from State control of that choice, so long as the schools meet minimum State standards.

Now, while that case can be viewed as a free exercise case, there is the problem of balancing the tensions between the free exercise and establishmnt clauses. The Supreme Court has recognized that, especially in the *Zorach* case; I think that this element is still very much in the Court's thinking—certainly in the thinking of Mr. Chief Justice Burger, Mr. Justice Rehnquist, and Mr. Justice White.

These gentlemen have been in the minority of the cases, but this Court, as I say, has been fractionated with a different majority alinement over the past 7 or 8 years, and any study of the cases will show that.

On one side you have a fixed view by Mr. Justices Brennan and Marshall; on the other you have the three gentlemen I mentioned. In the middle other justices have tended to drift either way based on the pragmatic judgments which guide the Court as a whole, including Mr. Justice Powell, whose latest concurring opinion reads more like Mr. White's opinion in the *Allen* case, notwithstanding that he wrote the Court's opinion in the *Nyquist* case.

I make this point not to count noses but to stress that there is no knee-jerk answer to the Court's reasoning in this area.

In 1947, of course, the Court upheld public paid bus rides to parochial schools and recognized that there are secular benefits that are constitutionally available to all students. More recently the Court squarely upheld textbook loans in *Meek* v. *Pittinger*, so that this is fairly clear law.

The *Meek* case did strike down certain elements of the Pennsylvania statute, but it clearly reaffirmed the constitutionality of secular educational aids directly used by children in nonpublic schools.

Beyond books and school transportation, the Court's rulings on constitutional principles have been uneven, because they have not been doctrinnaire; they have been ad hoc practical judgments.

It wouldn't be terribly productive to assay the various concurrent and dissenting opinions in the cases that I have mentioned and will mention. I think the judgment is: What will the Court, as a court, do if it is called upon to review 2142?

Now, the Court has adopted the familiar tripartite test, as I stressed, Senator Moynihan, as guidelines and not as a per se mechanical rule. The committee, I am sure, is familiar with it: a secular legislative purpose, no aid to religon as such, no excessive Government entanglement with religion.

I should like to quote for just a moment a portion of the *Meek* opinion in 1975. The Court said, "The tests must not be viewed", and I am quoting, "as setting the precise limits to the necessary constitutional inquiry, but serve only as guidelines with which to identify instances in which the objectives of the establishment clause have been impaired."

I am reading from page 6 of my submitted statement.

"Primary among the evils which the establishment clause protects have been sponsorship, financial support, and active involvement of the sovereign in religious activity."

I think these words, if carefully read, reflect a very carefully thought out guideline, sponsorship of religious activity, financial support of religious activity, involvement of the sovereign in religious activity.

I cite this clause because it has been repeated by the Court, as reference to the *Meek* case will show, in several different decisions, recent decisions of the Court itself.

Since, therefore, the standards of purpose and effect and entanglement are tentative and tied to facts, they must be viewed in terms of what the Court has actually done. I would only say this, Senator, not to take up the time of the Committee——

Senator MOYNIHAN. Professor, please.

Mr. VALENTE. I heard the bell.

Senator MOYNIHAN. Opposing counsel took a good deal of time this morning; you take all the time you want to.

Mr. VALENTE. In issuing the *Lemon* decision, where it struck down by a 5-to-4 vote, tuition reimbursement, the Court also upheld by a 5-to-4 vote, capital grants to church-related colleges in *Tilton*. That has since been affirmed in the *Hunt* and *Roemer* cases, which are also cited in my statement.

In terms of student aid, the Court most recently in *Americans United for the Separation of Church and State* v. *Blanton*, cited on page 7 of my statement, upheld broad forms of State aid to students at the higher education level—student financial aid.

Now, there is and has been noted some difference in terms of policy affecting higher and lower education, but the Court has not said that there can be no educational aid at the elementary levels to parents and children. Leaving aside the *Everson* and *Allen* cases, the buses, and books, that preceded our 1970 line of cases, in *Wolman* and *Walter*, to the surprise of many, the Court upheld secular educational aids to children in elementary schools, nonpublic schools, though they were handled by the teachers in those schools. There was no unconstitutional taint, because those aids were for educational purposes that could not possibly be diverted to religious use, and the real question is: Does Senate bill 2142 aid parents and children in terms of education, or does it aid institutions in terms of religion?

Now, the problem arises in terms of the closest fact precedents, with three cases, really: The *Meek* case, which says auxiliary aids when publicly administered but taking place in private schools might involve excessive entanglement; the *Nyquist* case on a tax credit, a very peculiar tax credit, I should like to comment on, involved with danger of aid to religion; and the *Wolman* case, which says that academic testing materials, diagnostic services, and therapeutic services—educational therapeutic services—were constitutional.

Lemon is very important because it is a watershed case. *Lemon* did not say that in aid to the parents there was an aid to religion. The Court specifically sidestepped the issue and said it involved excessive entanglement. We do have the problem, to use the Court's words, of avoiding aid to religion on the one hand, and excessive entanglement of Government supervision on the other.

On *Nyquist*, I should like to take time to say this: In *Nyquist*, the opinion of Mr. Justice Powell, writing for the Court, was very carefully guarded, and I have some excerpts on page 11 of my statement to show how carefully guarded it was.

He made rather forcefully the point that this particular tax credit was part of a rather generalized State scheme to provide tuition grants, tuition reimbursement grants, and that it was really tacked on to the bill merely to provide the equivalent of a grant to the parents who did not qualify for the grant.

The Court there could not have been thinking of a comprehensive tax policy measure, either by the States or by the Federal Government, because the Court there wrote, through Mr. Justice Powell: "The exemption challenged in *Walz*," that is, the New York property tax exemption case which was upheld as constitutional—Mr. Justice Powell wrote: "The exemption challenged in *Walz* was not restricted to a class composed exclusively or predominantly of religious institutions."

Neither is Senate bill 2142.

Continuing the quote: "As the parties here must concede, tax reductions authorized by this law, primarily to the parents of children attending secondary non-public schools."

That is not totally true as to this bill (S. 2142). There will be a substantial number, but it is not an exclusive aid to parochial schools measured on even a 75- or 90-percent type of aid.

Senator PACKWOOD. The overwhelming bulk of the benefits go to public schools or public-school children or public-school parents in this bill.

Mr. VALENTE. Well, certainly at the State colleges, and they are the overwhelming beneficiaries, as you say.

Senator PACKWOOD. Plus primary and secondary public schools.

Mr. VALENTE. There are private nondenominational schools as well. So that it was in narrow beaming of aid to, in the Court's eyes, favor predominantly one religious sect that gave it concern perhaps in terms of political entanglement, which would not be a problem certainly with your proposed legislation.

This third point, and this is a continuous quote:

> Without intimating whether this factor alone might have controlling significance in another context, it should be apparent that the narrowness of the benefited class would be an important factor.

So that I am using the Justice's words because I don't want to be accused of advocating in the guise of quoting law, which is always a danger in this field, as you gentlemen well know.

Finally, "Since the program here does not have the element of a genuine tax reduction such as for charitable contributions, we do not have before us and we do not decide whether that form of tax benefit is constitutionally acceptable under the neutrality test in *Walz*."

It seems to me that the Justice was continuing the pattern wisely of confining judgment to known situations and not coming in with a blunderbuss rule, especially since all of these cases, except *Tilton*, *Hunt* and *Roemer*, and *American United*, everyone of them were statutes affecting elementary and secondary education only.

So that we do have—I should correct that—*American United* was not a Federal case, but, *Tilton*, *Hunt*, and *Roemer* were.

This Court would not decide universally in *Nyquist* the constitutional incidents of tax relief.

Now, true, this quote mentions deductions——

Senator PACKWOOD. May I ask you to wind down. We try to hold our witnesses to 10 minutes so we have ample time for questions.

Mr. VALENTE. I will do that very summarily. I want to say that the Court in *Nyquist* says it isn't the word "credit" or "deduction" or anything else that makes it invalid—the Court stressed that—so that any hangup between deduction and credit is belied by the majority opinion in *Nyquist*.

The problem is this. Does this national tax measure represent legitimate efforts by Congress to foster education at all levels, among all groups, to cushion the effect of inequitable taxes, to establish a tax policy that allocates benefits and burdens fairly, or is this a law that is beamed to aid particular religious denominations? I think that is the question.

I would only call your attention, without quoting, to the statement by Mr. Justice Powell concurring in the latest case, the very latest case, on this business of reading the Constitution. That is on page 14. That statement is set down by the statements of Mr. Justice White and Chief Justice Burger.

Any one who did not look at the reports would say the same man wrote that opinion. So the policy of maintaining a fair balance between equity and educational policy, on the one hand, and extremes of aid, I think, is one that the Supreme Court majority will continue to adhere to.

I think I will stop there, Senator. You have been very gracious, and I thank you for your attention.

Senator **Packwood**. You have summed up our case as well as we could sum up our case. I look at those three standards the Court set down—secular purpose, primary effect, and entanglement. They have yet to decide any of these cases on secular purposes. They have said, yes, it is clearly here in this case.

The primary effect, the overwhelming primary effect, is on public education, not private, not even religious or private, but on public. The entanglement is so slight as to be de minimis, and if this is entanglement, surely contributions to churches have to be entanglements.

Mr. **Valente**. It cannot be entanglement because the Supreme Court in the *Wolman* case—this is Justice Blackmun writing—said specifically, of course, States can set minimum standards. That implies supervision, and we all know there has to be supervision in the accreditation process. There cannot be administrative entanglement unless they are willing to reverse the early *Pierce* case and the *Wolman* case, which they are not going to do.

Political entanglement, I think, is largely diffused in terms of the minds of Mr. Justice Powell, if you read that latest quote in my statement. He calls it a remote danger now in 1977. He may not have been thinking that way several years earlier. Political entanglements is minimized where the law such as you propose, benefits every segment of the community.

Senator **Packwood**. Pat?

Senator **Moynihan**. I would like to welcome you to this committee, Professor, and say you certainly do hearten us.

I have a few questions which I would like to put to you for the record and to learn your views.

Some persons have been troubled by the fact that in some circumstances, in the circumstance of low-income taxpayers, this tax credit would be refundable. A person would receive from the Government the difference between $500 and his tax payments.

Does that trouble you? Does that seem to you to——

Mr. VALENTE. I am not sure I follow the question.

Senator MOYNIHAN. If a person pays tuition to a school and the credit he is due is greater than the taxes he owes, the difference would be refunded to him.

Mr. VALENTE. I see.

Senator MOYNIHAN. Does that trouble you?

Mr. VALENTE. Not really, because it is somewhat akin to the negative income tax. The objective of that is to do equity to the low-bracket taxpayer.

Senator MOYNIHAN. And it doesn't trouble you?

Mr. VALENTE. It doesn't if it is seen both in purpose and effect to give equity to the low-bracket taxpayer.

Senator MOYNIHAN. Which is exactly the purpose, in our view.

Mr. VALENTE. That would be my feeling.

Senator MOYNIHAN. It should not be described as class legislation, legislation for people who wish——

Mr. VALENTE. That is right, Senator Moynihan. You mentioned the word class legislation because I think the people play by different rules under different parts of the Internal Revenue Code and they really shouldn't. We have many tax relief forms, whether they be reductions, credits, exemptions, exclusions, or otherwise.

I am not an expert on the code but I do know that the exemption of the Amish from the social security tax, the word isn't used but it is passed to relieve them of what was deemed to be an inequitable burden because they could not under their religious beliefs take advantage of the benefits of a social security system.

Senator MOYNIHAN. The Republic has survived.

Mr. VALENTE. Surely.

Senator MOYNIHAN. The Commonwealth of Pennsylvania does not observe any shaking of its constitutional foundations?

Mr. VALENTE. No. They—the Amish—are the most peaceful people in the world, Senator. We love them. But there is absolutely no problem with incidental benefits. I don't see how it can be avoided in any complex tax scheme such as ours, and if one were to say this favors one groups more than another, what are we supposed to do, change the tax rates for different income levels? Are we supposed to give widowers the same benefits under social security which we do not and which the Supreme Court held constitutional in the *Shavin* case. There are incidental disparities, and there are also aids to religious groups, but they are incidental. If the Court uses them that way, and I think it will, I don't think the Court is going to be looking down the throat of the Congress as it has down the throat of some State legislatures because of some pattern of legislation in those States.

Senator MOYNIHAN. I think we would like it perhaps primarily understood that apart from the equity to the taxpayers, I know that Senator Packwood and Senator Roth and I think Senator Ribicoff and perhaps all 50 of us who are on this bill, sense that there is a true public purpose involved in maintaining a plural educational system. In a manner which any social scientist or political economist could observe, what Schumpeter called the conquest of the private sector by the public sector has gone farther in this country in the field of education than in any other area, although it is an observable trend of modern society, but if some alternative to Government-provided services and Government-controlled activities is desirable, one would not think that there would be an area of more principal concern than education itself.

Mr. **Valente**. There is no question about it. Senator, I give you some personal emperical data. I have a son at the University of Pennsylvania. It is costing me. I have a daughter who requires education at a private academy and it costs me, and my two youngest children are in public schools. So that aside from the cost, those schools, the private schools, meet a need. I cannot treat all of my children as so many blocks going into one system, and they meet a very important human need, aside from the cost, and I think we also, on the cost point, too many individuals tend to forget that more than half of our State budgets are in educational expenditures, more than half of my local taxes are in educational taxation and expenditures.

The ratio is phenomenally heavy and we can talk about freedom of choice, but the Government role grows in taxation and spending. They are real obstacles of that choice. We want to look at the hard facts, it must be preserved by a bill such as yours, by some tax relief.

Senator **Moynihan**. Isn't it the case, Professor Valente, that historically when public education began on a sustained level, it became almost the uniform practice—one of those surprising things, the way all policemen's uniforms are blue, almost anywhere you go—you will find that in the arrangements made for the collection of moneys for education and their expenditure, there is a surprising pattern of trying to insulate that activity, even though it is an enormous one, from the more palpably political activities of the Government. The school board is different from the city council.

Mr. **Valente**. And so are school taxes.

Senator **Moynihan**. And there was a reason. They didn't want Government to get that much control over education. Well, following exactly the same theory of Government we are pusuing the effort to maintain a nongovernmental sector of the educational system of our country.

I would like to ask you about two other things if I can. First of all, you stressed in your testimony the degree to which the Court has been relying on facts. What are the facts of this case?

This morning I asked Professor Pfeffer about a statement in his testimony quoted from the *Tilton* decision.

Mr. **Valente**. Majority or dissent?

Senator **Moynihan**. I think the plurality, as he put it, in this case, and said the plurality distinguished between lower and higher institutions of learning primarily on the ground that, in the words of the Chief Justice's opinion, "College students are less impressionable and less susceptible to religious indoctrination," and I asked Professor Pfeffer if he would agree that was an empirical statement, and after we fussed a bit over whether it was right or wrong, he agreed that it was, in any event, empirical and presumably subject to some test of evidence, some capacity for replication.

I said, what was the evidence for it and did he know of any evidence that this was so, and I then appealed to the room, did anybody in the room know, had anyone read in the Journal of the American Psychological Society a test of impressionability or of susceptibility to religious indoctrination by stratified age cohorts and so forth, and nobody did. Do you?

Mr. VALENTE. No. It just doesn't exist. Nobody has ever attempted——

Senator MOYNIHAN. There is no such information one way or the other?

Mr. VALENTE. No one has ever attempted it.

George Lanue once tried to demonstrate empirically, very unsuccessfully in my opinion, that the books that were being lent under the Federal aid laws or the State aid laws were somehow being tainted by their use in sectarian schools. That article got as far off the ground as some of my articles in the legal commentary, and after that was written, the Supreme Court was very significantly unimpressed. But there is no one who has ever made such a study. We all know that all the schools change with the times, and I think it is just a red herring to make that statement as fact.

I will say this for Mr. Pfeffer's position. He will argue, undoubtedly, perhaps he argued with you this morning, that may or may not be empirically demonstrable, but that is what he thinks the Supreme Court's perception of facts is. As I said in my statement, I can go rummaging through the latest opinion in this field and produce five separate expressions of opinion, five different blocks in the Court. To find a majority you had to put different fingers together in *Wolman*, but what Mr. Justice Blackmun wrote in the *Wolman* case for the Court, that the fact that these educational aids, the Ohio auxiliary aids, the diagnostic aids, and the testing aids, were being administered in the parochial schools did not require the conclusion that there was entanglement.

That was a surprise because if anyone read *Meek* they would have said, if you have anybody walking through the school there is a taint.

Well, the *Wolman* case contradicts the impression created in *Meek* holding, and certainly contradicts the dicta Mr. Pfeffer lifted from *Tilton*.

I want to stress we can play, at this time or at that time, games with opinions language, the opinion language in these cases. What did the Court hold? *Lemon* involved educational aid. The Court found entanglement only in terms of excessive supervision, not in terms of the aid itself. They didn't say that if you go inside a school with a book, because of the atmosphere of the school, the book is outlawed. They didn't say that, they have never overruled *Allen*. They have upheld testing, academic and diagnostic testing in *Wolman*.

True, they required the remedial services outside the school, but the Court has shifted positions within the last year.

What I want to stress to this committee is the Court is now dealing with a Congress on national tax policy of a comprehensive nature that involves equities other than isolated religious groups or isolated levels of schooling.

Senator MOYNIHAN. On national tax policy?

Mr. VALENTE. Yes, sir, cushioning of disproportionate effects is certainly something I think the Court would be very slow to kick over.

Senator MOYNIHAN. I am not a lawyer but it seems to me from your testimony that it is quite clear that any notion of a monolithic and definitive position of the Supreme Court on this matter is quite the opposite of reality.

Mr. VALENTE. I think so.

Senator MOYNIHAN. The Court is fluid and responding to new situations in ways that might have been surprising 20 years ago.

Mr. VALENTE. I think so. And I think the quote I have put in the next to last page of my statement from the latest decision very forcefully demonstrates that.

Senator MOYNIHAN. I thank you very much.

Senator PACKWOOD. Professor, thank you. I hope you have better luck getting home than you had getting here.

Mr. VALENTE. Thank you.

Thank you, Mr. Moynihan.

[The prepared statement of Mr. Valente follows:]

STATEMENT OF PROF. WILLIAM D. VALENTE, VILLANOVA UNIVERSITY SCHOOL OF LAW

Mr. Chairman and Honorable Members of this Committee, I am an attorney who has practiced law 15 years in Philadelphia, Pennsylvania, during which time I also served in that city's law department under Mayor Joseph S. Clark. For the past 12 years, I have, as a full-time Professor of Law at the Villanova University School of Law, pursued research and instruction primarily in the field of constitutional and public law.

Preliminarily, I should like to thank this Committee for the opportunity to appear before you in order to discuss the constitutional aspects of S.B. 2142. I shall not dwell on the merits of the Bill. This has been eloquently done in the public statements by its sponsors and by other members of this Committee. I would only add that this country has long needed and awaited legislation such as this to provide a small measure of social justice to all American families and children, and without discriminating against or without penalizing hard-working, middle-class, tax paying families that exercise their fundamental freedoms to prefer private over state educational institutions. This legislation undeniably serves the national welfare and interest and is, I believe consistent with the spirit, as well as the letter, of the First Amendment, even as that Amendment has been construed and applied by a majority of the present Supreme Court Justices.

As an exercise of the taxing power vested in Congress by Article I of the Constitution, S. 2142 cannot be seriously challenged in terms of the Congressional discretion of how to structure its tax laws. The Internal Revenue Code provides different rate schedules, exclusions, exemptions, deductions, and tax credits for all manner of tax-payer classes and activities; and these determinations are peculiarly the function of the Congress. Its fiscal judgments on whom to tax, how much to tax, and the grant of tax relief are not subject to judicial interference in the absence of patent unconstitutional conditions.

One possible constitutional objection, which would be equally applicable to all provisions of the Internal Revenue Code, would arise if it were found that the law fosters racially discriminatory action. While I have not researched this point in terms of tax legislation, and while I cannot offer a firm position on this broad question, I do believe that the potential objection is not serious. The Constitution does not reach purely private discrimination (*Moose Lodge* v. *Irvis*, 407 U.S. 163 (1972)) and I am not aware of any case which held that a tax relief of general application provided a sufficient government nexus to individual private discrimination to render the legislative action unconstitutional.

The Supreme Court's decision (*Norwood* v. *Harrison*, 413 U.S. 455 (1973)); see also *Poindexter* v. *La. Fin. Assistance Comm.*, 275 F. Supp. 833 (1967); aff'd per curiam, 389 U.S. 571 (1968) that spoke to this question involved direct state aid to private schools that discriminated racially in their admissions. It stressed that indispensable education tools were being provided by Mississippi. That ruling neither governs tax legislation nor the Court's decision that upheld state textbook loans to private schools in cases where no institutional discrimination was shown to exist. (See e.g., the *Allen* case, infra.) Your proposed tax legislation is facially neutral and does not support any inference or connection with that kind of discriminatory pattern. Notwithstanding the protections against racial discrimination now provided under numerous Federal Statutes, and the power of courts to cure any unconstitutional application of any law, it may be prudent to include in the proposed Bill a provision that disallows the tax credit to any taxpayer whose claim rests upon payments to any school or college which practices unlawful racial discrimination. I am not an expert on the Internal Revenue Code, and if this matter is covered elsewhere, I ask the Committee's indulgence.

The major constitutional objections to be anticipated on S. 2142 will be that it provides unconstitutional aid to religion or fosters excessive government entanglement with religion in violation of the Establishment Clause of the First Amendment, with an ancillary argument that it also violates the Free Exercise Clause of that Amendment. Most of the precedent cases interpreting these clauses deal with state legislation, but, as you know, the First Amendment has a parallel application to states under the Fourteenth Amendment, so that federal and state cases are equally pertinent to constitutional principles in the area.

The balance of this statement will address the constitutional issues in three parts. The first part reviews the extant Supreme Court pronouncements on establishment of religion; the second part analyzes the application of that law to S. 2142 with respect to the establishment issue; and the third part deals briefly with the simpler free exercise issue.

THE DEVELOPING BACKGROUND LAW

There is no point to burdening this Committee with a review of the inconclusive history concerning the adoption of the First Amendment. It is not only inconclusive, but has been abused by self-serving interpretations and selective source selections to the point where the Supreme Court Justices, as well as constitutional scholars, have eschewed any attempts to resolve education aid-religion issues on that ground.

To place Supreme Court pronouncements in proper perspective, and to gauge the scope and force of its individual decisions, it is necessary to read its opinions in the context of their chronology and their particular fact frames. The modern law dates from 1925 when the Court struck down an Oregon statute which attempted to force all parents to enroll their children in public schools. (*Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925).) Pierce has consistently been construed by the Court as establishing a fundamental constitutional right in parents to control the education of their children, and a freedom to choose public or private qualified schools to that end. The present Justices on the Court embrace Pierce as a constitutional authority, and are becoming more sensitive to the practical destruction of these rights by soaring state and federal taxation and spending for educational programs that largely exclude those who choose nonpublic education for their children. To date, a majority of the present Justices have noted these admitted burdens and inequity but they have yet to rule that government sponsored economic coercion upon citizens who cannot afford to meet their taxpayer obligations and still retain sufficient monies to maintain and support private schools of their own choice justifies direct aid to the secular activities of those schools.

Since its 1947 ruling in *Everson* v. *Bd. of Education*, 330 U.S. 1 (1947) the Court has adhered to the view that publicly paid transportation of students to parochial schools is constitutional. The *Everson* case, by dicta, approved an earlier case that upheld, in a nonestablishment case, the state loan of secular textbooks to parochial school children. In recent cases, the Court has squarely upheld textbook loan aids under the religion clauses of the First Amendment. (See e.g., *Meek* v. *Pittinger*, 421 U.S. 349, 364–365 (1975); *Bd. of Education* v. *Allen*, 392 U.S. 236 (1968); *Cochran* v. *La. Bd. of Education*, 281 U.S. 913 (1930).)

Beyond books and school transportation, the Court's rulings and development of constitutional principle have been uneven, if not erratic, and have generated continuing dissents and diversity of interpretation among the Justices. It would be impractical, and not terribly productive, to cover the dissenting opinions in the various decsions, and I shall not attempt to do so except where they indicate what majority prevails in particular areas. Before appraising the latest cases, it may be safely reported that a majority of the Justices has evolved a tripartite test of constitutionality that currently prevails: "First, the statute must have a secular legislative purpose.

"* * * **Second, it must have a 'primary effect' that neither advances nor inhibits** religion. * * * Third, the statute and its administrtaion must avoid excessive government entanglement with religion," (*Meek* v. *Pittinger*, 421 U.S. 349, 358 (1975).) To date, the Court has not invalidated any law under the purpose test, and has largely accepted the secularity of purpose in challenged legislation, hence this statement will focus upon the critical issues of aid to religion and excessive entanglement. It is well to keep in mind the Court's warning that the foregoing tests are not absolute and self-applying. It recently declared: "It is well to emphasize, however, that the tests must not be viewed as setting the precise limits to the necessary constitutional inquiry, but serve only as guidelines with which to identify instances in which the objectives of the Establishment Clause have been impaired. * * * Primary among the evils against which the Establishment Clause protects 'have been sponsorship, financial support, and active involvement of the sovereign in religious activity.' * * * But it is clear that not all leigslative programs that provide indirect or incidental benefit to a religious institution are prohibited by the Constitution." (*Meek* v. *Pittinger*, 421 U.S. 349, at 358–359 (1975).)

It is clear, therefore, that the standards of establishment are tentative, and their application involves ad hoc judgments of the Court as to particular forms of aid in the light of the broad policies of the First Amendment. It is in this light that the following cases should be appraised. Under the excessive entanglement test, the Court struck down Rhode Island and Pennsylvania statutes which provided direct state reimbursement to denominational and nondenominational **private elementary schools for specified secular education costs. (*Lemon* v. *Kurtzman*,** 403 U.S. 602 (1971).) In *Lemon* the Court declined to pass upon the question of primary effect, and stated: "Candor compels acknowledgement, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of the constitutional law." (See 403 U.S. at 612.)

On the same day that it decided *Lemon*, the Supreme Court split 5–4 in upholding the Federal Higher Facilities Education Act provisions that provided grants for academic building construction at church-related and other colleges. It found this direct government aid did not violate the sponsorship, financial support, and entanglement barriers of the Establishment Clause. (*Tilton* v. *Richardson*, 403 U.S. 672 (1971).) Since then, the Court has sustained other state enactments which provided financial assistance to church-related colleges and universities (See e.g., *Hunt* v. *McNair*, 413 U.S. 734 (1973); *Roemer* v. *Md. Public Works Bd.*, 426 U.S. 736 (1976).)

With respect to government grants of funds for tuition, the Court recently affirmed by summary order a Tennessee law which provided such financial assistance to students in public and private (including church-related) colleges. (*Americans United for the Separation of Church and State* v. *Blanton*, 98 S.Ct. 39 (1977), affg. 433 F.Supp. 97 (M.D. Tenn. 1977); cf. *Americans United for the Separation of Church and State* v. *Dunn*, 384 F.Supp. 714 (M.D. Tenn. 1974), vacated and remanded. 421 U.S. 958 (1975).) This case has special relevance to the tax tuition credit legislation before this committee, in that the lower court stressed that the Government benefit was not targeted exclusively or dominantly upon church-related elementary schools.

At the level of elementary and secondary schools, the Court extended its disapproval of direct aid to church-related schools in *Lemon*, to reimbursement of school expenses incurred to provide state mandated services in student testing and examination, on the ground that those functions were controlled by private school teachers, thus leading to dangers of excessive entanglement; and to grants for maintenance or repair of those schools in poverty areas to ensure child health and safety, on the ground that such grants aided the religious activities of those schools. (*Levitt* v. *Committee for Public Education and Religious Liberty*, 413 U.S. 472 (1973); *Committee for Public Education and Religious Liberty* v. *Nyquist*, 413 U.S. 756 (1973).) It also found that tuition reimbursement statutes, though not involving school institutions, nevertheless, had a primary effect of aiding church-related schools, and thus were unconstitutional. (See *Nyquist*, supra; *Sloan* v. *Lemon*, 413 U.S. 825 (1973.)

The firmness of the majority's conclusion that tuition reimbursement to parents equals aid to the schools that had, in any event, already charged and collected tuition is not only questionable in logic, but also in law. The Court's latest affirmance of the Tennessee decision that aid to college students is not aid to the religious activities of church-related colleges raises the hope that the conduit theory of aid to religion was confined to the situations where parental aid was exclusively targeted to parochial schools. If so, benefit legislation of wider application would not trigger the application of that harsh rule. (See *Americans United*, supra; *Wolman* v. *Walter*, 433 U.S.—(1977).)

The recent Establishment Clause decisions deal with the public provisions of supplemental materials and services to private and parochial school children under Pennsylvania and Ohio statutes. In the Pennsylvania case, the Court nullified the Pennsylvania delivery by public school administrators of diagnostic, counseling, testing, psychological services, speech and hearing therapy, and related services for exceptional or remedial students; upheld State loan of secular subject textbooks to those students; but nullified the State loans of instructional equipment and material other than textbooks. (*Meek* v. *Pittinger*, 421 U.S. 349 (1975).) Its reasoning is significant, in light of still later decisions. As to instructional materials and equipment, the Court found that such aids, in effect, were a direct form of aid to the schools themselves, and an aid to religion.

As to the publicly administered services, it found that the services were educational in nature and performed within parochial schools, leading to an excessive entanglement of government with religion. (*Meek* v. *Pittinger*, 421 U.S. 349 (1975).) Two years later, however, the Court majority drew a crucial distinction between publicly administered diagnostic services, which it held constitutional, even though administered within the confines of a parochial school, and remedial educational services which would be constitutional, as there held, if publicly administered away from church schools, i.e. in a religiously neutral atmosphere. (*Wolman* v. *Walter*, 433 U.S. — (1977).)

The *Wolman* case is particularly instructive on several points. First, it made clear that government-religion contacts are not per se unconstitutional, even when government assistance takes place within the church-related school. For example, *Wolman* also upheld government provision of publicly prepared standardized diagnostic and academic test materials, though given by private school personnel, because those tests were religiously neutral and would be scored by state employees, in aid of secular educational aims. Second, *Wolman* found instructional materials and field trips, unlike busing to school, to be impermissible aids to the schools.

Third, the line drawing judgments of the Court under its general guidelines produced six different voting blocs and five separate opinions, out of which different Justices were found in different majority and minority alignments on different parts of the Ohio law. Hence, the basic lesson of this latest decision is that the line between permissible and impermissible legislation in aid of students and education involves nice contextual judgments that are confined to the facts at hand, in the light of broad policies that are not resolved by general opinion language or by test language.[1] This decisional process, more than the rhetoric of checkered precedent opinions must be evaluated in determining the constitutionality of new forms of individual or educational aid. Any lawyer who takes the time can cull from selected majority opinions language that, divorced from the case context, will support a wide range of inconsistent constitutional conclusions The concurring opinion of Mr. Justice Powell in *Wolman* is particularly *illuminating* and will be discussed in the next section.

The only case in which the Court considered the constitutional aspects of tax relief in connection with education expenses involved a New York statutory scheme that is quite distinct from that posed by S. 2142. The New York law provided a specially designed tax relief that was confined not only to tuition payments for private elementary and secondary education, but that was allowed only to parents who did not qualify for the tuition reimbursement under the same law which was limited to low income families. (*Committee for Public Education and Religious Liberty* v. *Nyquist*, 413 U.S. 756 (1973).) Further, the Court found that the tax relief provision was really an alternative adjunct to the main scheme of tuition reimbursement. Senate Bill 2142 cannot be characterized as a disguised form of tuition grant, intended solely to benefit parochial school supporters. It should be noted that the Nyquist case did not find excessive entanglement on the tax relief point, but only an impermissible effect of aiding religion. Its narrow dimensions are indicated by the following excerpts from the majority opinion by Mr. Justice Powell: "It is equally well established, however, that not every law that confers an 'indirect', 'remote', or 'incidental' benefit upon religious institutions is, for that reason alone, constitutionally invalid."

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[1] "The test is inescapably one of degree." *Walz* v. *Tax Comm.*, 397 U.S. 664, 674 (1970).

(413 U.S. at 771.) "The exemption challenged in Walz was not restricted to a class composed exclusively or even predominantly of religious institutions * * * As the parties here must concede, tax reductions authorized by this law flow primarily to the parents of children attending sectarian, nonpublic schools. Without intimating whether this factor alone might have controlling significance in another context, it should be apparent that * * * the narrowness of the benefited class would be an important factor." (413 U.S. at 794.) And finally, "Since the program here does not have the elements of a genuine tax deduction, such as for charitable contributions, we do not have before us, and *we do not decide* whether that form of tax benefit is constitutionally acceptable under the 'neutrality' test in Walz." (413 U.S. at 790, fn. 49.)

The only modern case in which the Court squarely addressed the constitutionality of tax relief as the central issue is *Walz* v. *Tax Comm.*, 397 U.S. 664 (1970) wherein state property tax exemptions to houses of worship were held to be constitutional. Like Nyquist, Walz is not directly in point, but it made clear that the necessities of religious neutrality justify the incidental aid to religion arising out of tax relief, since taxation of churches would involve serious government pressures upon the free exercise of religion and would invite excessive government religion entanglements.

THE IMPACT OF THE ESTABLISHMENT DECISIONS UPON THE PROPOSED BILL

Though none of the foregoing cases are foursquare controlling precedents on the validity of S. 2142, I have placed them before you because they are relevant. and also because they highlight the following fundamental facts:

1. Ten of the twelve odd major Supreme Court decisions on education legislation under the Establishment Clause have been rendered since 1971, and represent a continuing evolution of constitutional law.
2. Those cases reveal that the Supreme Court does not have any per se rule applicable to all cases, but only general criteria in the nature of "guidelines" whose real meaning comes from the underlying policies of the religion clauses.
3. Since the *Lemon* decision in 1971, each succeeding precedent produced new surprises, both in the application of the broad guidelines and in the judicial alignments on the case outcome. Though continuing to find themselves in some disagreement, a majority of the Justices appear determined to limit their constitutional rulings to pragmatic judgments that are confined to the statutory schemes that are specifically presented in each case. This process, as Mr. Justice Powell declared in the latest round of opinions, is not susceptible to tidy conceptual analysis. Rather, the value of the Court's decisions lies in the warnings they post on specific forms of educational aid.
4. The Court's decisions have not foreclosed legislative attempts to forge constitutional means to aid citizens who receive or support church-related educational institutions. Indeed, the Court has acknowledged the validity of several educational aids that incidentally aid such institutions through the voluntary patronage of free citizens.
5. To date, the Court has never considered a comprehensive education incentive measure such as S. 2142 which involves aid to citizens and not schools, and which makes no distinction or discrimination among age groups; among parent, adult or dependent students; among students in primary, secondary, college or vocational schools; or among beneficiaries in state or private schools.
6. To date, the Court has not nullified any Federal legislation in the education aid field, but upheld the federal law in the only case involving an Act of Congress (Tilton). It is, therefore, clear that Congress may expect a respectful consideration of its constitutional judgments by its coordinate branch in the national government.

In the absence of a foursquare decision affecting the federal Internal Revenue Code, and the unique aspects of federal tax policy and practices, the Supreme Court will, I submit, approach any amendments that add tax relief provisions in aid of families with an open mind and a sensitivity to the judgments of its coordinate branch of government. As recently as June, 1977, Mr. Justice Powell, concurring in *Wolman* v. *Walter*, supra, wrote:

"The persistent desire of a number of States to find proper means of helping sectarian education to survive would be doomed. This Court has not yet thought that such a harsh result is required by the Establishment Clause. Certainly few would consider it in the public interest. Parochial schools, * * * have provided an educational alternative for millions of young Americans; they often afford wholesome competition with our public schools; and in some States they relieve substantially the tax burden incident to the operation of public schools. The State has, moreover, a legitimate interest in facilitating education of the highest quality for all children within its boundaries, whatever school their parents have chosen for them. It is important to keep these issues in perspective. At this point in the 20th century we are quite far removed from the dangers that prompted the Farmers to include the Establishment Clause in the Bill of Rights. * * * The risk of significant religious or denominational control over our democratic processes—or even of deep political division along religious lines—is remote, and when viewed against the positive contributions of sectarian schools of any such risk seems entirely tolerable in the light of the continuing oversight of this Court. Our decisions have sought to establish principles that preserve the cherished safeguard * * * without resort to blind absolutism. If this endeavor means a loss of some analytical tidiness, then that too is entirely tolerable. * * * [t]he Court reaffirmed Allen, thereby necessarily holding that at least some such loans of materials helpful in the educational process are permissible—so long as the aid is incapable of diversion to religious uses. * * * and so long as the materials are lent to individual students or their parents and not to the sectarian institution." (433 U.S. —; 97 S. Ct. at 2613, 2614.)

1. *Secular legislative purpose.*—In light of the purpose of S. 2142 to provide a tax credit in aid of education for all citizens, their spouses or dependent children, whether in college, in primary or high schools or in vocational schools, and whether in state or private institutions, there is no basis in the legislation or in precedents to expect that the Court will deny the secularity of the purpose of Congress.

2. *Government entanglement with religion.*—S. 2142 involves no direct government-religion administrative involvement, no less *excessive* entanglement. The only condition for qualifying for the tax credit is educational expenditure at a state approved or certified school. Since state approval of schools is already a matter of state record and policy, no additional state involvement is required. No one can seriously contend that the present involvement of states in approving educational institutions to assure minimal standards in the public interest implicates an excessive supervision or entanglement. Indeed the Supreme Court in establishment and free exercise cases has repeatedly declared that the State has the right under its compulsory education laws to regulate and require schools to meet minimum state standards of approval or certification. (See *Wolman*, supra, 97 S.Ct. at 2602). Further, in the New York tax benefit case (*Nyquist*, supra) the Court expressly declined to rule that the state law fostered any impermissible entanglement. The State certification condition of your bill is, therefore, clearly constitutional.

3. *The primary effect test of aid to religion.*—The main issue is whether limited federal income tax relief, in the form of a tax credit, to individuals under this bill amounts to constitutional aid to religion. At the higher education level, the Court's recent affirmance of the constitutionality of the stronger aid forms of tuition grants to students in higher education (*Americans United*, supra) and the form of capital grants (*Tilton, Hunt, Roemer*, supra) forecasts that it will equally sustain the lesser, more indirect relief of tax credits for the same purpose. Logically, the same result should follow for parental educational expenses at the precollege level, so long as the statutory authorization is not a limited, narrow measure to aid parochial schools exclusively or predominantly. This latter point, which was the vice in the *Nyquist* case, supra, is not here present.[2] S. 2142 is a measure of general application, and does not discriminate between different groups or educational segments in our society. The Court has repeatedly noted, as early as Everson, and as recently as Wolman, that general welfare legislation, which is otherwise valid, is not defeated by indirect or remote benefits to religion.

The Court is certainly aware that Congressional tax policy involves many kinds of exclusions, exemptions, deductions, and credits that inevitably benefit some citizen groups incidentally, and that the purposes of those allowances to businesses, pensioners, working mothers, and even religious groups, such as the Amish (see e.g., 26 U.S.C. § 1402(e) (g); and various tax credits listed in CCH,

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[2] See especially the narrow reach of Nyquist, explained by the federal district court in *Americans United*, 433 F. Supp. 97 at 102–103 (M.D. Tenn. (1977), aff'd by the Supreme Court, 98 S. Ct. 39 (1977).

1978 Federal Tax Course, ¶209, p. 218, 219) have the primary purpose and effect of promoting fiscal stability and the economic welfare of the entire nation. The maintenance of a viable fiscal balance among our citizens is certainly the primary effect of all such allowances, including that now considered by your Committee. "There is no genuine nexus between tax exemption and establishment of religion." *Walz* v. *Tax Comm.*, 397 U.S. at 675 (1970).

Precisely because the allocation of tax benefits and burdens are entrusted to Congress, the Supreme Court has wisely declined to scrutinize the good faith and wisdom of congressional judgment in tax matters. As Mr. Justice Stone wrote: "Inquiry into the * * * motives of Congress * * * is beyond the competency of the courts. * * * They will not undertake * * * to ascribe to Congress an attempt, under the guise of taxation, to exercise another power denied by the Consitution." (*Sozinsky* v. *Unied States*, 300 U.S. 506, 513–14 (1937).) Recently the Court upheld the grant of a tax exemption to widows, but not to widowers against the constitutional challenge of discriminatory classification and expressly declared that Congress may by its taxing arrangements cushion the impact of "a disproportionately heavy burden" upon particular societal groups. (*Kahn* v. *Shavin*, 416 U.S. 351 (1974).)

By citing the foregoing authorities, I do not mean to imply that income tax laws are immune to judicial review under the Establishment Clause. I only suggest that the Court will recognize and consider many factors pertaining to income tax legislation that were not presented by its precedent cases, and that, in light of those factors, it will probably resolve any doubts in favor of finding a primary effect that is secular, and not religious in nature. Given the undisputed educational cost burdens with which American families are struggling; and the national interest served by their educational investments; and the general welfare served by relieving citizens of disproportionate economic burdens, incidental and secondary impact of such fiscal relief upon some church-related colleges and schools is not such a primary aid of religion that the Establishment Clause was designed to protect, or that the Supreme Court precedents are fashioned to avoid. The Court need not nullify these tax credits, any more than it need nullify tax credits and exemptions given to other citizen groups that equally incidentally affect in some remote or secondary way.

If the value of equality is to retain meaning for all citizens, the Establishment Clause will be found not to be a barrier to fair tax burdens and relief. Certainly such a ruling would be consistent with both constitutional policy, and with the specific holdings and rationale of the Supreme Court opinions in *Everson, Allen, Tilton, Walz, Americans United*, and *Wolman*, which I discussed above.

In concluding, I will speak only briefly to the Free Exercise Clause of the First Amendment, because I do not believe it has any pertinence to the proposed tax credit legislation. Some taxpayers have, in the past, argued that legislation benefitting religion incidentally, violated their free exercise of religion. The argument is strained, in that tax credits require no one to violate his or her religious conscience, but only to meet his or her general civic duties. The free exercise argument has consistently been rejected by the Supreme Court: "Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates upon him *in the practice of his religion*." (School District of *Abington* v. *Schempp*, 374 U.S. 203, 223 (1963).) Certainly the Supreme Court's ruling that upheld church property tax exemption in *Walz*, supra, answers the free exercise argument decisively.

In re: Statement of Professor William D. Valente (Villanova) before United States Senate Finance Committee, January 18, 1978. (Senate Bill 2142)

ADDENDUM

The recent decision of the federal district court in New Jersey which struck down a state income tax credit provision as an unconstitutional aid to religion under the First Amendment has not been published as yet, and cannot be analyzed with any precision. I would say, however, that it does not portend what the Supreme Court of the United States, which has reversed quite a few federal district court opinions on Establishment questions in recent years, will decide on federal tax credit legislation. For one thing, federal tax credits benefit education and parents of students at all levels of education, including state colleges and universities. For another, the New Jersey decision seems extravagant in discriminatory exclusion of taxpayers based upon their exercise of intellectual and religious freedom. As the Court said in the Everson case:

"On the other hand, other language of the amendment commands that New Jersey cannot hamper its citizens in the free exercise of their own religion. Consequently, it cannot exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith *because of their faith, or lack of it,* from receiving the benefits of public welfare legislation." (Emphasis the Court's.) See 330 U.S. at 16.

Finally, I believe that Congressional judgments on constitutionality, in the broad frame of relieving disproportionate fiscal burdens under a complicated code of national tax policy will weigh as heavily, if not more heavily, with the Supreme Court than the opinion of a single federal lower court. The question remains—how will the United States Supreme Court resolve the issue, not what a poll of federal district courts would indicate.

Senator PACKWOOD. Next, we will have a panel, Dr. Vitullo-Martin, Mr. Donald Erickson, and Prof. E. G. West.

I will let you gentlemen pick the order you want to go in.

STATEMENT OF DONALD A. ERICKSON, DIRECTOR, CENTER OF RESEARCH ON PRIVATE EDUCATION, UNIVERSITY OF SAN FRANCISCO

Mr. ERICKSON. I guess I have been elected to go first, Mr. Chairman.

I am Donald A. Erickson. My area of research really is educational administration. That means that I address myself and my research fundamentally to the question, what is the best way to organize schools so they will be optimally productive, and from that standpoint, one reason for my interest in private schools is that I regard them as an exceedingly unusual laboratory for getting evidence relating to that question.

As Mr. Moynihan well knows, and as other scholars in this area know, one of our most pervasive problems in answering that question is that schools tend to be so remarkably standardized in the way they approach education, and although I have emphasized other things in my written testimony, I think what I would like to say most at this point is that I value this bill because of the potential it has for keeping some diverse schools around long enough so that we can answer some educational questions empirically.

If it were true that private schools, particularly in the inner cities, were doing the apparently effective job they are doing, at a level of expenditure, basically comparable to the public school level of expenditure, then one could quibble and one could say well, perhaps the difference is explainable strictly in terms of the selectivity which those schools exercise in the admission of students.

However, that is not true. Quite obviously, disparities in educational finance are enormous.

Furthermore, as I have emphasized in my written testimony, we seem to be acquiring more and more evidence to indicate that this selectivity is more mythological than real.

I for one, at least, among other scholars whom I could mention, am becoming at least tentatively persuaded that the private schools, particularly in the inner cities, and particularly insofar as disadvantaged minorities are concerned, are greater, more productive and more cost effective than the public schools are, and furthermore, that they are more cost effective because their mode of operation is fundamentally different in a number of important particulars from the public school mode of operation.

I can enlarge upon that idea, but for the moment, let me simply conclude by saying that this interests me intensely as a student of educational organization, and that, as I said earlier, I think one of the most important things that your bill may do is to keep some of these precarious private schools in existence long enough so that we can learn what some of the greater cost effectiveness are for the benefit of all schools, public and private.

Senator MOYNIHAN. That was a miracle of concision.

STATEMENT OF DR. THOMAS W. VITULLO-MARTIN

Mr. VITULLO-MARTIN. I am Thomas Vitullo-Martin. I am an independent policy analyst. I have spent the past 5 years studying non-public schools, primarily from the point of view of the political scientist interested in the way private schools involve parents in their governance. I have worked under grants from the National Institute of Education, the Office of Education, the University of California, and Columbia University. I have also studied—for the NIE—the involvement of private school students in ESEA Title I services.

I have submitted my comments in full and will merely highlight them here. I am going to address myself to the question of whether the proposed legislation will help primarily upper- and middle-income parents and not lower-income parents, and whether the proposed legislation will in essence damage lower-income families by leading to the wholesale abandonment of schools by middle-income families and by the most politically active parents in the public schools.

The bill will aid all those who pay tuition to public or private schools and therefore aid those now paying tuitions to private elementary and secondary schools and, we presume, would encourage others to choose those schools who cannot now afford the tuitions. We should first note, then, "Who attends private schools?"

Private schools reach a complete spectrum of the income groups in the American population. Four percent of all students from families with incomes under $5,000 a year —1975 data but reported by National Center for Educational Statistics on 1967 dollars—are in private schools, but that is a national figure and private schools are geographically concentrated primarily in the Northeast and the Midwest, with 20 percent of the private schools in the South and 15 percent of the private schools in the Far West.

In the Northeast 8 percent of the students from families in the lowest income group are in private schools, which is a substantial figure. Fifteen percent of the students from families in the income range of $7,500 to $15,000 a year are in private schools and 25 percent of the people above $15,000.

So, in the Northeast, nonpublic school enrollment is basically a middle-class phenomena, with a modest rise in the proportion of the highest income groups using these schools. In the Northeast, and elsewhere, the lowest-income families are less likely to use private schools.

We would expect this since private schools almost always charge tuition. But even for low-income families the proportion enrolled in private schools is significant. Nonpublic schools enroll 8 percent of the lowest-income students in the Northeast, but only 10 percent of all students in the country. These figures are for elementary and secondary enrollment combind, but there is a great drop in the presence of low-income students in private secondary schools. For elementary schools alone, the percentages would be higher, but complete data is not available.

In the Far West there is a great surprise. As income rises from middle-income levels, utilization of schools drops. Ten percent of middle-income families, but only 8 percent of the wealthiest segments of the population of the Far West are in private schools, the same rate as for the lowest-income families in the Northeast.

Furthermore, if we look at minority enrollments in private schools in the Far West as a whole, we find a higher proportion of minorities in private schools than in public schools. In fact, blacks are more likely than whites to be private school students. Seven percent of the black population of the Far West are in private schools versus 6 percent of the white population in private schools.

So the stereotype of private schools as havens for the rich is not accurate.

If we looked a little more closely, approximately 75 percent of all private school students are in Roman Catholic schools. Of Catholic school students, 7 percent are black, and approximately 13 percent are minority. About 20 percent of the U.S. school-age population is minority, so Catholic schools enroll a proportion of minorities close to the proportion of minorities in the school-age population.

Part of the difference can be attributed to the fact that many minorities are located in areas where there are very few Catholic schools and very few private schools at all.

An even higher proportion of Lutheran school students (Missouri Synod) are minorities—10 percent of elementary and 18 percent of secondary students are black in these schools. The percentage of minority students is, of course, higher.

Blacks are not usually Catholic or Lutheran. About 1.5 percent of the black population is Catholic and 1 percent is Lutheran so that blacks are present in these schools in disproportionately high numbers.

Private schools serve an even more important role in educating lower income and minority students in certain cities.

I quote from the testimony I submitted:

> In some dioceses, the Catholic schools serve high percentages of minorities. The Montgomery, Alabama district schools of the Mobile diocese have more than a 59 percent non-Catholic enrollment (1973-74). In the entire diocese, which covers Mobile and southern Alabama, 32 percent of all students were black and 24 percent non-Catholic in 1975–76. The Birmingham diocese, which covers north Alabama, had 43 percent black and 30 percent non-Catholic enrollment. The Catholic schools in the District of Columbia (1974–75) were 77 percent minority at the elementary level and 50 percent minority at the high school level. About 88 percent of the system's non-Catholic students were minority students; 22 percent of the students in District Catholic schools are non-Catholics".

So there is a substantial presence of non-Catholics in these schools. The problem is paying for them. Traditionally, church-affiliated schools are supported partly from tuition and partly by the congregation. Usually 50–50, but sometimes different proportions—with up to 100 percent coming from the parish.

In the inner city schools there are no substantial parishes. If you have a very high non-Catholic population or non-Lutheran population, you have no real base within your parish upon which to tax and support your schools.

Consequently, the highest tuitions in both of these systems are in the inner city schools, despite subsidies that are generated within the systems and given to those parishes. Tuitions in these Catholic schools range from $500 to $750, compared to an average of $250 in a solidly Catholic middle-class school where the parish is paying half or more of the cost.

In the inner city Catholic schools I have students, 30 to 60 percent of the families receive AFDC. A $500 tuition is 10 percent of the gross income of the family. It begins to limit the possibility of parents enrolling their children in private schools. The real problem is that private schools serving lower income families cannot charge enough to survive without subsidy. It is precisely these people that the proposed legislation would aid most. It could keep them from being priced out of their educational choice.

Senator Moynihan made a point about the efficiency of these schools. I would just take note that Catholic schools, which enroll 3.4 million students, spend about $2.4 billion on educating children—including the value of contributed services. That happens to be less than the educational budget for the city of New York, which enrolls 1.4 million students and, in fact, has 886,000 students in daily attendance. The budget for the city of New York is $2.7 billion.

Finally, I was concerned about the question of whether the proposed legislation would draw the best, let's say the most politically active people out of the public schools. I think to an extent that that is accurate. The proposed legislation, to the extent that it aids people to select schools, would tend to draw out of public schools people who are most intensely interested in the education of their children, but I don't see that as damaging to public schools. Rather I think that it would give to the poor, who right now have no choices, the kind of device for calling schools to account that middle and upper middle income families normally have.

Public schools in the cities that are being stripped of their middle and upper middle income parents are really in competition with public schools in the suburbs, which are free alternatives to upper-income groups. The poor in the cities have no choice such as that.

The upper middle and middle income groups can choose schools that have the quality they like. In choosing, they can get services that satisfy them without relying on political mechanisms like boards of education. When a school falls below par, when it doesn't do what it should be doing for their children, they move. These parents in fact pay for the public schools they choose in the amount of money they pay in rents on their housing, and in additional property taxes. In a way, all schools, public and private, for all parents, except the poorest, are schools that people choose and that they pay a kind of tuition to attend. Public and private schools are quite similar, except for the lowest-income families. The poor are deprived of that choice and this measure will give it to them.

Senator PACKWOOD. Professor West.

STATEMENT OF E. G. WEST, PROFESSOR OF ECONOMICS, CARLETON UNIVERSITY, OTTAWA, CANADA

Mr. WEST. My name is E. G. West. I am a professor of economics from England, now working in Canada where I have been for the last 7 years.

From time to time I have been coming to the States and studying the debate on education, which, I must say, is in very interesting state at the moment.

In my written testimony, I rely on basic economic reasoning—not sophisticated or complicated economic arguments—but fairly simple ones; but I doubt if I can do justice to them in the 5 minutes allowed me. So I do hope you will read them.

The first point I make is that the supporters of this bill themselves are not doing sufficient justice to it. I divide my commentary into three aspects.

First, the degree of benefit to children of low-income families. Second, the total costs to the Treasury. Third, the fate of the legislation in light of recent Supreme Court interpretations of the first amendment.

On the question of economic justice to low-income families I think there is more to be said for the Packwood-Moynihan bill than the authors have been realizing. Other people speaking here today have commented on this issue and have stolen my thunder on this issue. So I want to labor the point.

Everyone pays taxes, even the poorest. The bill provides an opportunity for poor people to retrieve some parts of their education taxes and spend them directly instead of indirectly via the political process. This gives them the extra advantage of exercising choice. Hitherto choice has been concentrated in the higher income sector, as was mentioned this morning by another speaker.

So the Packwood-Moynihan proposal will promote what I call fairer shares in choice in education. But there is an additional point. Hitherto middle-class families using parochial schools have been able to take advantage of their status as charitable institutions. Contributions to charitable institutions are tax deductible, as we have heard already today. What hasn't been discussed is the fact that some parents have managed to arrange a kind of quid pro quo with the parochial schools such that their contributions are received in lieu of fees. In this way, high-income taxpayers, income taxpayers who use parochial schools have been at an advantage compared with poorer users of schools who do not pay income taxes or who payed at low rates. The Packwood-Moynihan legislation will equalize the tax advantages among all income groups who use parochial schools whatever the amount of income tax they pay.

Another point, if I may refer to a previous witness. The last speaker this morning argued that the poor have benefited samewhat from the public school system. As it is worked out however it has been largely a failure. The implication is, therefore: "you should give us the money in a different way, not via public schools. Give us the education money in cash so we can spend it on education ourselves." I think that argument may be capitulating too readily on the question of who is paying for the poor's education. Do not the poor themselves pay something?

Mr. Moynihan, you rightly demanded evidence, hard facts. And you raise the question about some being possibly concerned about those people who receive $500 under your scheme but don't pay income taxes. Would this sum be regarded as a refund? I think this is the point to ask for the evidence. Where is the evidence that that person, the poorest person, is not paying $500 through taxes, at least through lifetime taxes? I doubt if you will find the authorities able to give you such evidence. So should not they be the ones to be put in the witness box?

The only evidence that I know on this issue is contained in the cost-benefit study that I refer to in my written testimony. It shows that the poorest persons are paying 8 percent of their annual income on education taxes. But it doesn't stop there. People pay education taxes (property taxes, sales taxes, et cetera) throughout their lifetime, not just currently. And the correct measure is the lifetime contributions.

In a transitional early period one may be poor. Later on one may be less poor, and so on. Over a lifetime the individual tends to be richer and pays more taxes than when he is a young parent. This is the perspective that should be brought into debate. Certainly I doubt whether it can be shown that poor people don't spend up to say $400 over their lifetime.

I am sure, Mr. Moynihan, you might be persuaded to settle for $400 instead of your $500. Let me put the proposition like this. Find out what a poor family is paying and fix their refund at that limit. There could then be no debate this is "public aid." There is simply a circular flow of these limited funds from that family back to it again.

I come now to my second issue. It relates to your estimate of the cost of your scheme to the Treasury of $4.7 billion in 1980. I found that estimate a little ambiguous, and even perhaps misleading.

Insofar as your proposal will stimulate competition, and since competition is generally acknowledged to put downward pressure on costs, so some part of the revenue losses that are anticipated will be offset by a decrease in necessary expenditures for education.

Next, in the absence of some extra facility like your tax credit, the consensus is that enrollments in higher education will fall. This means a lower formation of what economists call "human capital," or a smaller investment in specialized skills. In turn, this implies a lower rate of growth of the national product. A lower national product, however, means a smaller tax base. The Treasury could end up losing several billion dollars for this reason. The Packwood-Moynihan proposal should therefore be costed on the basis of the realistic alternative revenue scenario that takes this reduced tax base into account.

The proposal could next possibly reduce another important cost in the present higher educational system. This is the cost of increasing student loan default rates. Student loan defaults in America, as in Canada, too, have been increasing dramatically. The phenomenon seems to stem from inadequate incentives facing the banks as collectors, in policing the defaulters. There are meanwhile high incentives to student borrowers to default. The Packwood-Moynihan tax credit scheme could I believe simulate a more efficient loan scheme, one that uses the income tax machinery as the collection device.

Picture a situation where, by allowing people to have tax credits now, they will invest it in education and will then be more productive in the future. They will consequently provide a bigger source of revenue than otherwise in the future. There will then be a kind of payback mechanism built into the tax credit scheme in the same way that a normal tax scheme operates. But it will be a loan system possessing greater efficiency than hitherto because the income tax authorities are the collectors. One cannot, for instance, argue bankruptcy as an excuse for not paying income taxes but you can do this to escape paying conventional student loans.

Stronger arguments, finally, could be made in support of the tax credit bill with respect to its constitutionality.

Senator PACKWOOD. I wonder if you could finish quickly so that we can proceed with questions.

Mr. WEST. Very briefly, your argument on the first amendment is focused on the establishment clause and very little on the free exercise clause. Briefly my argument is that the taxing of people who use parochial schools imposes a cost on them. This cost can be regarded as a prohibition in degree in terms of the free exercise clause of the first amendment. By returning taxes you can regard this, I would argue, as a deletion of a previous error rather than a granting of aid.

Thank you.

Senator MOYNIHAN. Very good.

Senator PACKWOOD. Mr. Erickson, I believe that Mr. Lamborn at one time asked for your opinion as to whether or not the tax credit would be automatically passed through as tuition increases, and you responded by letter to him and I would like you to put your thoughts on the record on that, if you would?

Mr. ERICKSON. In a sense I regard that as a specious issue in that these private schools, the vast majority of them in cities, I regard the issue as essentially specious in that the private schools exist because the parents want them to exist. They exist by virtue of the parental support, they exist to meet the needs of the parents, and consequently to regard something that support that goes to the schools and permits them to perpetuate themselves and continue in existence as not aid to parents is kind of argument that I find it very difficult to follow.

Senator PACKWOOD. There is no empirical evidence, is there, again referring to the different subject of Professor Moynihan, I have seen no evidence or no study that indicates tuitions are up $100 because there is a $100 tax credit.

Of course, in this case, if you are going to raise tuition, the taxpayer is only going to pick up half by deduction, the taxpayer is going to have to pay the other 50 percent himself.

Mr. ERICKSON. Yes, I have looked for that empirical evidence. I can't find any. Furthermore, it seems to me if you do have private schools that for some reason or another, and since they are nonprofit, if they get in on this, I don't know what their motive would be, if they raise their tuitions in proportions to the greater moneys made available as a result of the tax credit bill, it seems to me that other private schools will spring into existence to cater to the parents who don't like that fact.

So that the overall impact I would strongly argue, has got to be aid to the parents and to put it more directly it has got to be a greater availability of the kind of alternative forms of schooling that increasing numbers of parents, including new segments of the population, seem today to desire.

Senator **Packwood**. If you would have no objection and Mr. Lamborn would have no objection, I would like to place your letter in the record. Mr. Lamborn, do you object if I place that letter in the record?

Mr. **Lamborn**. Not at all.

Senator **Packwood**. The entire letter will be inserted there for this opinion.

[The above referred to letter follows:]

University of San Francisco,
School of Education,
San Francisco, Calif., October 5, 1977.

Dr. Robert L. Lamborn,
Executive Director, Counsel for American Private Education,
Washington, D.C.

Dear Bob: You have asked me to provide a professional opinion, in the light of the available research, concerning the contention that if individuals are allowed a tax credit for tuition expenses, schools, colleges, and universities will simply raise their fees to the full extent of the tax credit allowed, and that consequently the entire benefit of the tax credit legislation will be absorbed by these institutions and none of it will go to individual taxpayers.

I am unable to find any systematic evidence bearing directly on this contention. I would have to say quite bluntly, that the contention is purely speculative and gratuitous.

Since there seems to be no research evidence bearing directly on the question, one is forced to examine the contention in the light of the research and theory that sheds at least some light on the issue. First of all, it should be noted that private schools and institutions of higher education are subject to powerful market forces. There seems to be ample ground to predict, then, that schools, colleges, and universities which arbitrarily raise their tuition fees will, unless they happen to cater to a captive market, be undercut by competing institutions with lower fees. Since leaders in schools, colleges and universities are well aware of these competitive forces, I would not expect them to move enmasse toward any rapid increases in their tuitions and other fees hard on the heels of tax credit legislation.

Another part of the issue relates to the well documented fact that private schools, colleges and universities, having to finance themselves largely from private sources, are generally operating at levels of per pupil expenditure considerably below the expenditure levels that are common in public institutions. Many of these private institutions are teetering on the brink of financial insolvency. In the light of the financial constraints that face their patrons and donors, they have not been able to raise their expenditure levels in keeping with rapidly spiralling costs. If it should happen that a certain percentage of these institutions find themselves able, in the light of market forces, to raise their fees, if and when a tax credit bill places more purchasing power into the hands of their patrons and donors, the most prominent result, obviously, would be a strengthening of the institution and an enhancement of the services the institution makes available to its constituency. In fact, the increased revenue could in numerous cases represent the difference between survival and catastrophe. It seems to me that the strengthening of these institutions must be regarded as a benefit to their patrons, just as the weakening of these institutions is a serious disadvantage to their patrons. It is misleading, then, to assert that, if in a certain percentage of cases schools, colleges, and universities raise their fees commensurate with the benefits of a tax credit bill, the positive consequences of the bill have been absorbed entirely by the institutions and do not benefit individual taxpayers.

It should be noted, as well, that the available evidence shows many private educational institutions to the finding many ways of subsidizing the cost of attendance of low income people. It can be demonstrated that many of these institutions have gone surprisingly far in that regard, given the financial limitations under which they must operate. I am strongly inclined to predict, consequently, that a tax credit bill, by easing the flow of private funds to private institutions, would not only improve the accessibility of these institutions to middle class people but would also make possible a more extensive subsidization by these institutions of the cost of attendance of the impoverished.

I hope that this is substantially the information that you need. I have not endeavored to provide documentation on these points but I could if it were needed in the future.

Sincerely,

DONALD A. ERICKSON,
Director,
Center for Research on Private Education.

Senator PACKWOOD. Pat?

Senator MOYNIHAN. I would just say that it is marvelous to have the three of you here and I would like to keep you all afternoon. I won't do that. First, particularly, I would like to welcome Dr. West and say how extraordinarily thoughtful it is of you to come forth and speak from the great world of the economists. I must say, I listen to economists. They know things.

The estimate of the suggestion that that particular form of tax relief would remove an otherwise unconstitutional encumbrance with respect to the free exercise clause is my idea of elegance. That is what they teach at London University.

I wanted to ask you, sir, the question from an economist's point of view, the question of introducing or maintaining or preserving. I think Mr. Erickson spoke in terms of conservation. He would like to see a few of these species around for purposes of archeological inquiry. But there is a prospect that introducing or maintaining a vigorous private sector does introduce competitive elements with the public sector in education.

Is this fuzziness in my mind or has there been what you might call a tendency toward monopoly pricing in the public sector? Or is that just fanciful?

Mr. WEST. It is certainly not fanciful; it is exact.

It is not a monopoly pricing system, it is a monopoly that doesn't use conventional prices.

Senator MOYNIHAN. Would you say that again?

Mr. WEST. It is not a monopoly pricing system, it is a monopoly that doesn't use prices because education is "free." But the worst kind of monopoly, or, if you like, the most "severe" kind, is the monopoly that can restrict entry the most effectively. The statutory monopoly is the most severe monopoly in that sense, because it can restrict entry most effectively.

The public school is a kind of statutory monopoly. It can restrict entry by compelling its customers to pay in advance of entering "the store." Because they are selling education free on the streets, the public schools have an inevitable effect of crowding out the private schools. Crowding out is not fair competition. Thus there is a strong monopoly element present. But it is not a complete monopoly yet, because there are some private school remnants still hanging on. But once that goes the public school monopoly will be complete. Costs will then go up much further. You did not take account of that aspect in your analysis but you should.

Senator **Moynihan**. You would have, as it were, the effect of monopoly pricing, that sector could absorb resources at maximized levels?

Mr. **West**. Yes.

Senator **Moynihan**. Can I ask you an empirical question. In Britain, and in Canada, the government does support the non-governmental education, quite generously, almost on an equal level, I believe.

Has this tended to maintain some competition and do you see some price effects? Do you dare discern as price effects?

Mr. **West**. I am afraid your interpretation is incorrect in the case of Britain at the moment. Until about 3 or 4 years ago Britain did have a tradition of what they call a direct grant system in aid of private schools.

But under Mr. Wilson's government the direct grant system was then abolished.

Senator **Moynihan**. I see.

Mr. **West**. And the grammar schools in Britain had to decide whether to go fully into the public system or go fully independent. There is a complete dichotomy now.

In Canada, there is the interesting situation in one province (Ontario) where the Catholics are allowed to opt to have their taxes finance Catholic schools within a kind of public system. No other minorities are allowed this privilege however. Your tax credit would give all minorities this privilege.

Senator **Moynihan**. Well, I do thank you sir, very much.

I would like to ask Mr. Erickson a question, if I may, which is to say, you touched upon the question of the different modes of operation of these two systems, and really the difference in prices is startling, isn't it?

Mr. **Erickson**. It really is.

Senator **Moynihan**. The Lutheran schools, which are a national system, operate at about 43 percent of the national average cost of the public schools. What have you learned, when did your center start at San Francisco?

Mr. **Erickson**. This started only in September but I have been doing some research along this line for almost two decades,

Senator **Moynihan**. I know your paper discussed taking off from Greeley and Rossi: a very elegant paper it was.

Mr. **Erickson**. Yes. We are getting some of our best clues from Canada because there are some Canadian Provinces where the Catholic schools are not publicly supported and we are currently as of this moment winding up an exploratory study of privately supported and public supported Catholic schools in Canada.

We are getting some perfectly fascinating results from that.

I could back up from this and say there are some very obvious differences in the modus operandi, inquiring, for example, of my colleague, Bill McCreedy, at the National Opinion Research Center in Chicago. I was there for 11 years at the University of Chicago. He tells me that the Catholic school system in Chicago educates approximately one-quarter of a million children with 37 full time administrators other than principals.

The public school system in Chicago educates twice as many children, half a million, approximately, but has 3,700 administrators other than school principals.

Now, that is a fairly dramatic difference. There are many more subtle differences I could boil down but I think we are stumbling upon as a fairly persuasive difference, and it corresponds to, if you will permit, a couple of sociological terms, sociologists like to speak of the gemeinschaft versus the gesellschaft.

Essentially it looks to me as when you look at private schools as a whole their modus operandi is to develop close communal personal relationships in the school.

Senator MOYNIHAN. Gemeinschaft?

Mr. ERICKSON. The gemeinschaft, essentially. The personal qualities of the teacher are often valued beyond much more than the technical competency as measured by the rules of thumb which many of us don't believe in in the first place. The schools are generally smaller, although the classes may be larger, whereas I think on the other hand, that, unfortunately, public schools are moving more and more toward an industrial model where efficiency is a much more coldly calculative concept, and here the basic assumption seems to be that you don't need these close personal relationships, you don't need a close commonality of viewpoints and objectives, and all you need is a technically competent teacher at the front of the class and learning will occur.

Those are just some clues. We need a lot more evidence before I should say what I have said already.

Senator MOYNIHAN. I do hope that when the time comes for Senator Packwood to defend this measure on the floor, you have fully briefed him on the importance of resisting Gesellschaft tendencies in public school systems and there is bound to be somebody out there you can talk to. We would like to hear more from you and we will be asking you.

I want to ask one question of Mr. Vitullo-Martin. We really have encountered a question, it is heretical to say, but we may well have gone well beyond optimal expenditure per pupil in education as suggested by the roughly comparable results from wildly disparate spending levels.

Do you have a feeling on this? I am so pleased that Dr. West and all of you have raised this question of efficiency here.

Are we trying to encourage efficient modes of activity or inefficient ones and——

Mr. VITULLO-MARTIN. In my cynical moments I sometimes think that the public school system—in big cities at least—is primarily a jobs program. Its primary interest is providing jobs, not education. In that sense, public schools are more efficient because they provide many more jobs per pupil than private schools.

To answer simply, I find it very difficult to get beyond cost comparisons. The city of New York could, for instance, save little less than half of its expenditure on high school students by sending them all to the "elite" high schools in New York.

The private elite schools of New York charge a tuition of $1,300 to about $2,500, graduated from the 1st grade up through the 12th. Those schools are charging half what the public school system is spending per pupil.

There are certain things that are unfair in these comparisons about New York. The amount of money that is actually spent per child in the classroom is not very large, although the system spends $2,400, approximately——

Senator MOYNIHAN. With 3,700 administrators.

Mr. VITULLO-MARTIN. There are a lot of other people to get that money before it gets down to the student, although it is spending $2,400 per child enrolled, and $3,100 per child if you base it on average daily attendance. Only about $900 per child is spent at the elementary school classroom level. The system has been spending a lot more money lately, because it fired so many younger and therefore lower paid teachers. It fired so many teachers that the salary for the bottom teacher in the system is now $20,000 a year. Another $10,000 must be spent for fringe benefits and overhead. Those are enormous expenses for a classroom of 24 children.

That explains a lot of the cost of the system.

In fact, in terms of real productivity in the last 5 years, the system has raised its per pupil/teacher ratio by 20 percent. It has eliminated large numbers of aids and extra services. The system is much more austere today than it was in 1970, let's say, when the budget was half the budget of today.

The religious schools which, incidentally, serve children of every family-income group in approximately the same proportion as the public (in fact, a lower proportion of the highest income groups than the public) spent 25 to 35 percent of the public allocation per pupil, and graduate children reading at grade level, on average. In the public schools serving inner-city and lower-income children, the students read on average over 1 year below grade level—and that is with a 45 percent retention rate in the elementary school years.

So, there is certainly an inefficiency. I think that the primary benefit of competition of the private schools, though would come out of basically permitting the people to show that there is a standard that the public schools have to live up to and if they don't live up to them they lose their clients. If you don't have clients, you don't have the public schools. That is really the only kind of leverage that the people in the cities could have.

We must accept the fact that in the suburban areas there is competition among public schools. The real difference between inner city public schools and suburban public schools that suburban public schools have to produce. If they don't produce, property values in the neighborhood drop drastically and everybody moves away. It is a powerful, probably the primary, way that the suburban schools are governed by parents. It isn't politics. It is the fact that when people leave systems that don't produce, everybody loses money.

Senator MOYNIHAN. Well, I do thank each of you gentlemen. It has been stimulating and we are much in your debt.

[The prepared statements of the preceding panel follow. Oral testimony continues on p. 179.]

PREPARED STATEMENT OF DONALD A. ERICKSON, DIRECTOR OF THE CENTER FOR RESEARCH ON PRIVATE EDUCATION, UNIVERSITY OF SAN FRANCISCO

SUMMARY

My testimony represents an effort to counteract the popular myth that the nation's private schools are mainly elitist, high-cost, lily-white sanctuaries that do little or nothing to help oppressed people, including minorities and the

poor. Census evidence is introduced to show the presence of a wide distribution of income levels in private schools, a distribution of income levels in private schools, a distribution surprisingly similar to that of public schools. The same census evidence, supplemented by other data, shows that the black share of private school enrollments has been growing, despite a general enrollment decline and the steadily worsening impact of fiscal constraints, including the constraints imposed by the private school parents must pay twice (once through taxation and once through fees) for their children's schooling. Lacking national evidence, I have introduced evidence from the State of Michigan and the City of Chicago to show that religiously affiliated schools are far less selective of students than has been generally assumed, and that they seem to allocate a far greater proportion of available resources to the benefit of poor children and black children than public schools have done. Furthermore, there is evidence to suggest that the mode of education in private schools may be fundamentally different in some respects from the public school mode. In a time of increasing concern about what the nation is getting in return from its immense expenditures for public schooling, I have argued that ways should be found to keep private schools alive, for many reasons, including our need to determine whether some of the methods used in these schools are so effective that they should be adopted in all schools, private and public.

STATEMENT

As a scholar who has conducted research on private schools for two decades, I wish to comment briefly concerning the popular myths cited as fact by some opponents of S. 2142, the proposed Tuition Tax Credit Act. The myths add up to the contention that this nation's private elementary and secondary scnools are mainly elitist, high-cost, lily-white sanctuaries which provide little or no assistance to children from low-income families, especially families belonging to disadvantaged minority groups.

Some of the best information now available in this regard is drawn from the U.S. Census and published in summaries and tabulations developed by the National Center for Educational Statistics (NCES). In 1975, NCES reports, only 17.5 per cent of children in private elementary schools came from families with incomes of $15,000 and over (in terms of 1967 dollars).[1] A whopping 34.4 per cent of these children were drawn from families with incomes under $7,500. I would like to see anyone run an elitist, high-priced elementary school with those family-income distributions in its student body.

Since the high school grades are much are expensive than the elementary grades, it is predictable that privately funded high schools will have to draw more clients from the higher income levels. Public schools also do this, not because of higher costs but because of the disproportionate drop-out rate among lower-income people. In 1975, the proportion of students drawn from homes with incomes of $15,000 and over (1967 dollars) was 38.5 per cent in public schools and 61.7 in private schools.[2] A full 16.1 per cent of the private high school population was from homes with incomes below $10,000. Eight per cent was from homes with incomes below $7,500. While private education is not the same mass enterprise at the secondary level that it is at the elementary level, the figures I have cited do not describe an elitist, high-cost endeavor, except in the sense that virtually all high schools, public and private, are now expensive. I wish we had more extensive data in this regard, but I would guess, on the basis of my own observations, that the mean per-pupil expenditure level is considerably lower for private high schools than for public high schools in the United States. I have no hesitation whatsoever in asserting that most private elementary schools in the United States operate on niggardly support in comparison with the money public schools receive.[3] Chart 4.03 is reproduced below unaltered, from NCES's 1977 edition of "The Condition of Education."[3]

When you consider that the average family patronizing a private school is paying for schooling twice, once through public school taxation and once through private school tuition, whereas the average family patronizing a public school is paying only once, I think the comparability of the family-income distributions shown in public and private schools, as shown here, is remarkable. Anyone who thinks the private school enterprise reflected in this chart as unusually expensive and elitist is misinformed.

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[1] Mary A. Golladay, "The Condition of Education: 1977 Edition: A Statistical Report on the Condition of Education in the United States," vol. 3, part 1 (Washington, D.C.: National Center for Educational Statistics, 1977), p. 190.

[2] *Ibid.*, p. 193.

[3] *Ibid.*, p. 74.

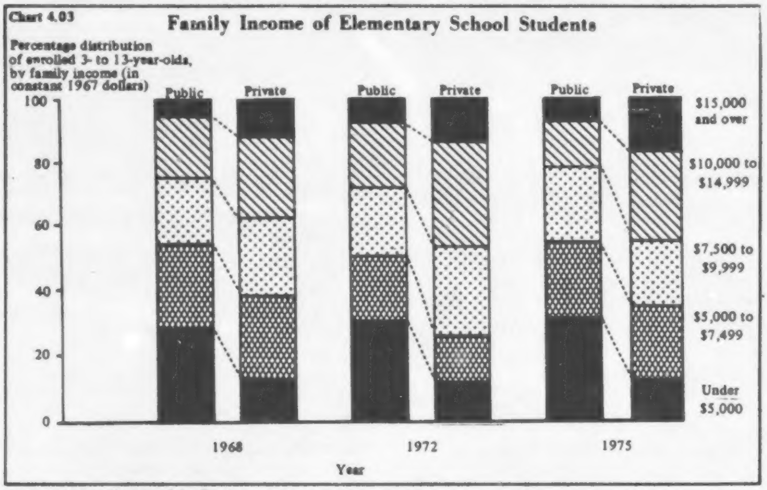

Chart 4.03

Family Income of Elementary School Students

Source of Data: Bureau of the Census

According to the same census data, 5.1 percent of the total private school enrollment in the U.S. was black in 1975.[4] The black share of private school enrollments has grown, both absolutely and proportionately, since 1968. According to the National Catholic Education Association's Data Bank, the proportion of black students in Catholic schools in 1976–77 was 7.2 per cent, up from 4.8 per cent in 1970–71.[5] These figures must be interpreted in the light of three major factors:

(a) Since around 75 per cent of all private schools are Catholic, yet few blacks are Catholic, it has been difficult in the past to attract black students into most private schools, though recently many more blacks have been seeking admission.

(b) Since private schools are voluntarily patronized and supported, they are generally unable to shift racial distributions by dint of administrative decision, as public schools can often do.

(c) Since a vastly disproportionate share of blacks are poor, private schools often have to choose between admitting more blacks and staying solvent. Having received many requests for advice over the years from private schools that are trying to survive in black areas of our cities, I conclude that even a 5, 6, or 7 per cent black enrollment in private schools in encouraging, given the adverse factors I have mentioned. When I see public leaders opposing any form of relief to private schools on the grounds that they do not educate more black citizens, I think they are saying, in effect, "Until you act as if you don't need any fiscal relief, we won't consider giving you any!" In my mind, the biggest impediment to increasing the number of black students in private schools generally is the set of financial handicaps that the proposed Tuition Tax Credit Act is designed to alleviate to some extent. Public policy has imposed enormous economic burdens on private schools by demanding that their patrons finance these schools while simultaneously paying, through taxation, for the education of other people's children in public schools.

What is more important than the distribution in schools of rich and poor, black and white, is the treatment these people are accorded when admitted. We are seeking funds for extensive research along this line, since the lack of adequate evidence to illuminate public policy is rather appalling. The information that *is* available, however, rather stridently contradicts the popular mythology. Let me cite just a little of it:

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[4] *Ibid.*, p. 192.

[5] Obtained in a telephone conversation on January 6, 1978, with Rhoda Goldstein, National Catholic Education Association Data Bank, Washington, D.C.

In a comparative study of public schools and the three largest groups of nonpublic schools (Catholic, Missouri Synod Lutheran, and Calvinist) in Michigan in 1966–67, three surprising findings emerged:[6]

(1) The Catholic elementary schools were far more accessible to urban low-income families than the relevant literature has suggested.[7]

(2) There was more evidence of equality of opportunity in the church-related schools than in the public schools. Of fifteen "advantages" considered, only three were as frequently available in low-status public schools as in high-status public schools, whereas the corresponding figures were eight in Lutheran schools, seven in Catholic schools, and six in Calvinist schools.[8] Within the socio-economic range of children attending them, the church-related schools demonstrated less of a tendency than public education to discriminate against the poor.

In 1971, similar tendencies reappeared in a major city (Chicago) in another Midwestern state.[9] The sample consisted of 74 randomly selected Catholic elementary schools, one each in the 74 Chicago communities (defined by Community Fact Book) with elementary schools, along with one or (whenever possible) two public school(s) located nearby in each neighborhood. The following findings (among others) were indicated:

(1) Though more Catholic schools were found in wealthier areas than in poor areas, when location was controlled (by means of the stratified sampling described earlier) it was evident that the Catholic schools were not, as had often been charged, filtering off the more intelligent students in each area and leaving the dregs in the public schools. City-wide, the 50th percentile IQ in the sample was 106.0 for public schools and 104.5 for Catholic schools. This finding was not attributable to any tendency for Catholic schools to filter off the brightest students in poor neighborhoods and the dullest students in wealthy neighborhoods, at least so far as ability factors reflected in the IQ were concerned. In fact, the Catholic school IQ's fell further behind the public school IQ's in poor neighborhoods than in wealthy neighborhoods.

(2) Dollar outlays per pupil for instruction were more evenly distributed across neighborhoods of varying wealth by the Catholic schools than by the public schools. In low-income communities (under $8,500 per year), Catholic school students gained more in reading and mathematics achievement between the third and sixth grades than did public school students (in terms of grade-equivalent norms, 2.9 as compared with 2.0) whereas in the higher-income communities (over $10,800), Catholic school students gained less than public school students (3.5 as compared with 3.8).

(3) The achievement gap between children from high-status communities and children from low-status communities was widened between grades 3 and 6 considerably more in public schools (where the gain of high-status children was 3.8 and the gain of low-status children was 2.00, or about half as much) than in the Catholic schools (where the former children gained 3.5 and the latter gained 2.9, a rather similar amount).

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[6] Donald A. Erickson, "Nonpublic Schools in Michigan," in J. Alan Thomas, "School Finance and Educational Opportunity in Michigan" (Lansing, Mich.: Michigan Department of Education, 1968), pp. 209–291.

[7] *Ibid.*, pp. 224–229.

[8] *Ibid.*, pp. 253–254. The "advantages" were:

1. No students in obsolete classrooms.
2. No classrooms with more than 35 pupils.
3. No enrollment exceeding building capacity.
4. Average textbook age less than 4 years.
5. Paperback collection available.
6. Closed-circuit television provisions.
7. Any kind of educational television.
8. Special classes for verbally talented.
9. Special classes for quantitatively talented.
10. Special classes for artistically talented.
11. Full- or part-time librarian.
12. Full- or part-time remedial reading teacher.
13. More than 10 percent of teachers in federal summer institutes.
14. SMSG mathematics curricula used.
15. Nongrading.

[9] Greg Hancock, "Public School, Parochial School: A Comparative Input-Output Analysis of Governmental and Catholic Elementary Schools in a Large City" (unpublished Ph. D. dissertation, Department of Education, University of Chicago, 1971).

(4) Though the Catholic schools were trying in a special way, it seemed, to cater to disadvantaged children—by providing a higher proportion of auxiliary personnel and a lower pupil-teacher ratio in low-income areas than elsewhere—school factors of this type were reflected in achievement to a lesser extent than in public schools, while out-of-school factors were reflected in achievement to a greater extent than in public schools. Perhaps in academic particulars, just as in the religious particulars in the Greeley-Rossi study, the effectiveness of the Catholic school depends upon a mutual-reinforcement dynamic.[10] Thus, Catholic schools may capitalize on home values and activities much more than public schools are prone to do. The possibility that differential dynamics are involved in public and parochial schools is further emphasized by the finding that academic achievement gains are associated with larger school size in the public group and smaller school size in the Catholic group. One plausible theory is that achievement is linked to individualistic competition in public schools, but with a "we-against-the-outside-world" sense of solidarity in the parochial schools. Large school size might reinforce competition, but is likely to dampen a sense of community. Similarly, compatability between school and home is probably more essential to social solidarity than to a competitive outlook.

(5) When the amount of achievement attributable to in-school variables in the study was isolated, it was clear that the public schools were benefiting wealthy and white communities more than poor and black communities, while the Catholic schools were benefiting poor and black communities more than wealthy and white communities. While public schools discriminated against the poor and the black, the parochial schools discriminated against the rich and the white!

These data suggest, as did the Michigan findings, that while enrolling a higher proportion of poor students than did the Catholic schools (and possibly other church-related schools), urban public schools were contributing to the perpetuation of existing socio-economic stratification, while Catholic schools were counteracting it. It is easy to understand the finding some years ago that the parochial schools functioned as important avenues of upward mobility when Catholics were oppressed and poor.[11] There is evidence that the public schools were never very successful at assisting disadvantaged minorities.[12]

(6) These compensatory effects in Catholic schools were being produced at a per-pupil cost only 59.8 per cent as high as the public school expenditure level. Even when the value of contributed services in Catholic schools was included, these schools were operating at a cost-equivalent of $260.7 per pupil per year as compared with $436.2 per puil per year in the public schools.

As anyone who has read recent newspapers (let alone the research reports) knows, it is now virtually taken for granted that private schools in urban centers produce considerably higher student achievement-score averages than do public schools in the same areas while generally operating *at* drastically lower levels of per-pupil expenditure. Along with numerous other scholars, I have developed an interest in explaining this pattern of events. As yet we have no conclusive evidence. As I examine the available evidence and conduct my own research, however, I am less and less convinced that the apparent superior cost-effectiveness of the private schools can be explained on the basis of selective admissions. I am more and more convinced, especially in the light of evidence I am now obtaining, that public and private schools generally are operating in terms of different educational principles. To mention just one example: I think many public schools are moving toward an industrial mode of performance. Schools are becoming larger and more impersonal. There is more and more emphasis on the technical efficiency of teachers as measured by the rules of thumb that state departments of education think appropriate and less and less emphasis on what teachers stand for as human beings. Efficiency has become a rather coldly calculative concept. I think most private schools, on the contrary, are built on the assumption that little education occurs unless teachers, parents, and students form a community of interests and values. More stress is placed on the character of teachers than on their technical efficiency. Commitment counts more than the number of college courses in Education.

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[10] Andrew M. Greeley and Peter H. Rossi, "The Education of Catholic Americans" (Chicago: Aldine Publishing Co., 1966), pp. 85–91, 95, 223.

[11] *Ibid.*, pp. 199–203, 209–11, 216–17, 221, 277–81, 287–89.

[12] Colin Greer, "Cobweb Attitudes: Essays on Educational and Cultural Mythology" (New York: Teachers College Press, 1970); also his "Public Schools: the Myth of the Melting Pot," Saturday Review, Nov. 15, 1969); and his "Immigrants, Negroes and the Public Schools," Urban Review, 3 (Jan., 1969), pp. 9–12.

This characterization is obviously overdrawn, but I think it reflects a basic difference, by and large, between the public and private sectors of education today. Many other differences could be cited. We do not yet have evidence to show which of the many imaginable approaches to the education of the young are the most effective and humane. At least until we acquire that evidence, I hope we will not permit established fiscal constraints in this country to destroy the diversity now available for study. Unless something is done about those fiscal constraints, I am afraid that the eventual demise of most private schools, and the diversity they represent, is inevitable.

PREPARED STATEMENT OF DR. THOMAS W. VITULLO-MARTIN

SUMMARY

Private schools, subject to regional variation, enroll a substantial number of lower-income and lower-middle income families.

The schools enrolling most lower-income students are almost exclusively church affiliated, but do not discriminate on the basis of religion. They are highly cost effective, and perceived as better educational institutions by most lower-income families.

Although tuition at these schools is generally low, tuition costs still operate to limit or deprive lower-income parents of educational alternatives for their children. The Federal government taxes the money these lower-income families spend on tuition. The proposed legislation will have a disproportionate impact on low-income families, making possible alternatives otherwise foreclosed.

The proposed bill will ease the cost of private education for the wealthy, and in so doing should encourage wealthy parents to switch from exclusive public schools to private schools. Such switching would substantially reduce the disproportionately-high subsidy of the wealthy in public education.

The tax credit approach, by continuing the dependence of schools on tuition-paying parents instead of refocusing the attention of the schools toward the government for financial security, reinforces parental control. Perhaps more important, it continues the present system in which private schools that cannot deliver desirable, quality educational services close for lack of patrons. Under direct government-financing arrangements (of the type proposed in the administration's alternative to these bills) schools that deserve to close will continue to receive support.

I will address myself to two related questions: Does the proposed tuition Tax Refund Act of 1978 aid only middle and upper-middle-income parents? Does the proposed Act harm children from lower-income families by depriving the public schools they attend of tax dollars for education and by encouraging middle-class abandonment of public schools?

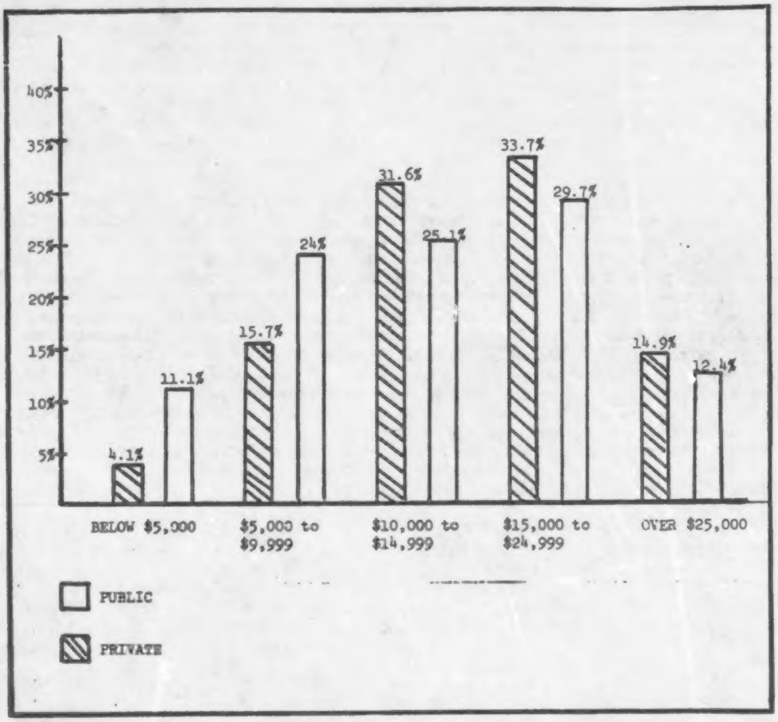
ARE ONLY MIDDLE-AND UPPER-INCOME GROUPS AIDED?

No. The legislation will help all income groups because all income groups use private schools. Low-income Americans cannot support private schools without help. And the resources that used to help them are disappearing. Private schools are perhaps most important to low-income parents, and the legislation will benefit them.

By private schools I mean all elementary and secondary church-affiliated and independent nonpublic schools. The family incomes of private school students are remarkably similar to the income distribution patterns for the entire American population (see Chart 1 on page 2).

If we take as a standard of low income the level at which the federal government ceases to tax a family of four (given standard deductions, $7,200), private schools enroll more than half as many low-income students as public schools do. About 13 percent of the private school population has a family income of under $7,500 vs. 23 percent of the public school population. A greater proportion of the public school population has an income of under $10,000 (35 percent vs. 20 percent). Once we look above the lowest-income groups, however, we find the greatest difference in enrollment occurs in the $10,000 to $15,000 group. Private schools find 6 percent more of their total population in this group than public schools do. Significantly for our question, the least difference in the two groups is found in the wealthiest portion of the population. Private schools enroll only 2.5 percent more wealthy students than public schools do.

CHART 1.—Income distribution of families of students in private schools as compared to distribution of family income in the United States, 1974



Source: U.S. Bureau of the Census, Statistical Abstract of the U.S.: 11975. Washington, D.C., 1975, and U.S. Bureau of the Census: Current Population Report, Oct., 1974, "Social and Economic Characteristics of Students," as cited in Outlook, CAPE, April 1976, Washington, D.C.

Put another way, 79 percent of the wealthiest families in the U.S. enroll their children in public schools where their education is totally subsidized by the public.[1] Furthermore, public schools serving upper-income families typically spend more per pupil than private schools serving a similar group. The highest-spending public school district in the New York metropolitan area spends $8,600. That is more than any private schools within New York City and is two or more times the amount spent by the average private school member of the National Association of Independent Schools. (Most of these high-spending public school districts are suburban.)

The counterpart to this suburban public school parent living in the city spends between $1,300 and $2,600 per child at private schools, with transportation, books and fees adding an additional $800 per child. Thus, the average family in the private schools in the city which serve the wealthiest urban families spends about $4,800 of after-tax income to send two children to private school. The parent is taxed for all costs associated with the school of his child. A family with an income sufficient to maintain a city residence and pay such private school fees would likely be taxed at a combined city-state-federal rate of over 50 percent. Hence, the wealthy private school patron pays property, sales and income taxes to support public schools while paying for private schools—and thereby decreasing the burden on the public school system. He also pays approximately $4,800 to federal, state and local treasuries as tax on the money spent for private education.

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[1] National Center for Educational Statistics, "Condition of Education 1977."

Private schools cover about 70 percent of their costs through tuition income so that, in return for the parents' $9,600 annual investment (tuition, transportation and fees, and the taxes on them for two children), their children receive per pupil expenditures of $2,100.

Among schools serving middle and upper-middle-income parents in the New York area, the New York City public schools have one of the lowest per pupil expenditure rates. They spent $2,532 per registered pupil in 1976 or $3,115 per actual pupil (average daily attendance). In public suburban schools that cater to wealthy parents, per pupil expenditures went as high as $8,600 in 1975 in the New York metropolitan area. The public schools typically spend more per pupil than elite private schools. The property taxes public school parents have to pay to support such high-cost public school systems are themselves tax deductible. This means that the federal government pays, in effect, one half or more of the tuition bill for these "free and public" schools. The irony is that these suburban public schools are far more restrictive than urban private schools since they permit only children living within their boundaries to attend. In the highest-expenditure suburban systems, parents must expend substantial capital for housing in order to move into the district. This requirement makes the schools more exclusive by income than city private schools charging the highest tuition.

Under the proposed legislation, only about 650,000 upper-income families would receive tax refunds of $500 each, for a total cost of $325 million. If the legislation succeeded in encouraging the wealthy who have enrolled their children in public schools to switch to private schools, public treasuries would receive a substantial increase and more money would be left to spend on lower-income students. Less than a 6 percent shift (108,000) of this group into private schools would make the venture profitable to public treasuries if $3,000—a conservative assumption—were spent per child by the systems enrolling the children of these wealthiest families.

Chart 1 suggests that middle and lower-middle-income groups are more likely to use private schools than are the wealthiest groups. But, of course, there are more families in these groups. A greater proportion of private school students are from the wealthiest families than of pulic school students—the common wisdom. The wealthier a family is, the more likely it will enroll its children in private schools. 4.5 percent of those students from families with incomes under $7,500 enrolled their children in private schools in 1975, but 21 percent of those with incomes over $25,000 enrolled their children in private schools.

But if we look at a regional breakdown, we find very little relation between attendance at private schools and income—except for the lowest and the highest-income groups (see Table 1 on page 6). The Southwest and Central states behave much as the national data indicate. In the West, the pattern changes: The highest-income families are less likely to enroll their children in private schools.

Private schools serve all income groups. They serve a greater proportion of the wealthiest families in the South—a manifestation of a long southern tradition. In the Northeast, in contrast, they serve relatively large percentages of all below-median income families—13 percent.

As we look at family income statistics for private school patrons, we see what is common sense: Market forces seem to limit attendance by the lowest-income families. We will discuss later the fact that the lowest-income families spend as much as 10 percent of their gross income for tuition at private schools. The proposed $500 per child refund to this group will be likely to have a greater effect on increasing their attendance.[2]

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[2] "The report of the National Commission on Financing Post-Secondary Education concluded that a college can expect to lose from one to three percent of its enrollment for every $100 of increased tuition." Sen. William V. Roth, Jr., New York Times, January 10, 1978. The effect is observed on families capable of sending their children to college. It is likely to be magnified on the lowest-income families attempting to send their children to private schools.

TABLE 4.04.—ENROLLMENT IN PRIVATE ELEMENTARY SCHOOLS OF PERSONS 3 TO 13 YR OLD, BY FAMILY INCOME AND REGION: OCTOBER 1975

[Numbers in thousands]

Region	Total enrolled	Enrollment, by family income (1967 dollar) Less than $5,000	$5,000 to $7,499	$7,500 to $9,999	$10,000 to $14,999	$15,000 or more	No report
Northeast:							
Private enrollment	1,058	161	249	196	195	189	69
Percent of regional enrollment	14.1	8.0	15.8	15.5	15.2	24.9	----------
Southeast:							
Private enrollment	640	51	110	117	160	138	65
Percent jo fjregional enrollment	9.8	2.1	8.1	12.3	19.0	33.7	----------
Central:							
Private enrollment	1,029	95	207	229	288	138	73
Percent of regional enrollment	12.8	5.6	11.0	14.2	18.5	20.4	----------
West:							
Private enrollment	493	59	88	109	130	52	54
Percent of regional enrollment	6.8	2.8	5.8	8.7	10.8	8.7	----------

Note: Detail may not add to totals because of rounding.

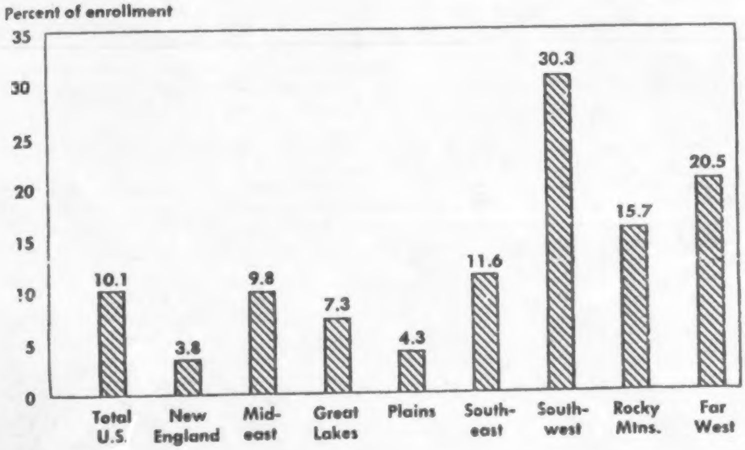
Source: U.S. Department of Commerce, Bureau of the Census, "Current Population Survey," unpublished tabulations.

Source: Mary Galladay, U.S. Department of Health, Education, and Welfare, National Center for Educational Statistics, "The Condition of Education, 1977." No. 017-080-01678-8 (U.S. G.P.O., Washington: 1977), p. 191.

The West contains other surprises. In that region, blacks are more likely to attend private schools than whites are.[3] By 1975, the percentage of blacks in private elementary schools in the West almost doubled from the 1970 base year, when NCES attempted to count minority enrollment in private schools by region (see Chart 2 below).[4] In half the states in the West, more of the students in private schools were members of minorityl groups than were students in public schools (see Table 2 on page 8).

CHART 2

Minority group enrollment as a percent of total enrollment in nonpublic schools, by region: United States, 1970-71



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[3] NCES, *Condition of Education 1977*, p. 76.
[4] NCES, *1977*, Table 4.05, p. 192.

Source: Diane B. Gertler, Linda A. Barker, National Center for Educational Statistics, Statistics of Nonpublic Elementary and Secondary Schools, 1970–71, DHEW Publications No. (OE) 74-11420, p. 15.

TABLE 2.—MINORITY GROUP ENROLLMENT AS A PERCENT OF TOTAL ELEMENTARY AND SECONDARY ENROLLMENT IN PUBLIC AND NONPUBLIC SCHOOLS, BY REGION AND STATE: UNITED STATES, 1970–71

Region and State	Percent minority	
	In public schools [1]	In nonpublic schools
Total, United States	20.9	10.1
New England	6.6	3.8
Connecticut	12.2	5.9
Maine	.8	1.1
Massachusetts	6.0	3.9
New Hampshire	.8	1.4
Rhode Island	4.9	2.4
Vermont	.4	1.3
Mideast	22.0	9.8
Delaware	21.3	5.6
District of Columbia	95.5	43.9
Maryland	24.9	7.8
New Jersey	20.0	7.8
New York	25.3	12.3
Pennsylvania	12.6	5.7
Great Lakes	14.7	7.3
Illinois	22.0	12.0
Indiana	10.3	6.7
Michigan	15.1	6.3
Ohio	13.0	5.0
Wisconsin	6.0	2.2
Plains	7.3	4.3
Iowa	2.2	1.2
Kansas	8.8	6.6
Minnesota	2.6	1.8
Missouri	15.1	7.3
Nebraska	7.0	3.4
North Dakota	2.0	2.1
South Dakota	5.7	19.6
Southeast	29.2	11.6
Alabama	34.3	17.2
Arkansas	25.1	13.8
Florida	27.9	17.3
Georgia	33.5	10.3
Kentucky	9.3	4.7
Louisiana	41.0	16.4
Mississippi	51.0	5.7
North Carolina	30.7	12.1
South Carolina	41.2	8.0
Tennessee	21.2	6.3
Virginia	24.7	6.2
West Virginia	4.9	2.8
Southwest	34.0	30.3
Arizona	28.8	25.5
New Mexico	48.1	56.7
Oklahoma	16.0	12.5
Texas	37.1	30.0
Rocky Mountains	11.7	15.7
Colorado	18.8	19.2
Idaho	4.4	5.4
Montana	7.3	11.1
Utah	6.2	11.6
Wyoming	8.9	22.0
Far West	22.5	20.5
Alaska	17.5	43.1
California	27.3	22.1
Hawaii	NA	51.3
Nevada	14.3	9.0
Oregon	4.5	3.7
Washington	7.0	5.8

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[1] Source: Department of Health, Education, and Welfare, Office of Civil Rights. "Directory of Public Elementary and Secondary Schools in Selected Districts: Enrollment and Staff by Racial/Ethnic Group, Fall 1970."

PRIVATE SCHOOL OPTIONS FOR LOW-INCOME FAMILIES

A number of factors are making it increasing difficult for private schools to continue to serve minorities and lower-income families. In the New York area per pupil costs in private, inner-city schools average $750; tuitions average $500—with some much higher. (The per pupil expenditure for the public schools in the same area is $2,700.) Tuition payments normally account for 5 percent to 10 percent of the gross income of over half the families in these schools. Observers believe that these schools are at their financial limits. It is on just these sorts of private schools—those with a marginal chance of survival—that the Tuition Tax Refund bill is likely to have its greatest impact.

Roman Catholic schools enroll about 76 percent of all nonpublic school students, but about 91 percent of all blacks in nonpublic schools and an even higher percentage of Spanish-surnamed children. Although there are twice as many Spanish-surnamed children in the U.S. student population, there are approximately the same number of each group in Catholic schools.

The support of inner-city schools has become extremely expensive to the Catholics, Lutherans, and others who maintain them. The costs of educating lower-income students must be socialized across a greater group than the parents themselves. The necessity is greater when substantial portions of the students come from single-family homes and are dependent for their income on budgeted payments from departments of social services. Welfare funds are not allocated for the private school education of dependent children. Traditionally, church-affiliated elementary schools of all denominations have been partially or wholly supported by the parishes to which they were attached. More than public schools, these parish schools were neighborhood schools since their sole revenue came from the neighborhood.

For private secondary schools, the patterns varied considerably. Some schools were attached to parishes and supported by them. But few parishes were sufficiently large to support a high school from their own population, and the practice developed of high schools from one parish accepting students from another, with the second parish transferring to the first funds to cover the costs of its students. Eventually, dioceses took over management of many parish high schools or founded their own to cover the needs of several parishes. Finally, a number of religious orders in several of the Christian sects established high schools. When these high schools were financed by the parishes or the diocese, students from the parish would be assigned to them. When their financing came from tuition or other outside sources, students would seek admission to the high school of their choice. In some cases—notably the Roman Catholic Jesuit order—the operation of high schools was independent of the authority of the bishop of the diocese.

Diocesan high schools would attempt to attract students from the parish high schools (since the diocese would charge a parish tuition for each child the parish sent to the school) and the independent high schools would try to attract students from both the other types. Some parishes encouraged the competition by providing their children with partial support of the tuition charged at an independent high school, if the student chose it.

Thus, as compared to the public school system, the religious schools had a much more locally controlled operation, internally competitive, especially at the high school level.

The problem for inner-city schools is that there are no longer sufficient members in the parishes to subsidize the operation of the schools, and that the religious orders, whose contributed services once kept the costs of the schools down, are no longer available. Projecting from 1973 survey data, about 70 percent of elementary and 62 percent of Catholic secondary teachers are lay teachers. Catholic dioceses have tried to pay lay teachers a high percentage of public system scale salaries. But teaching contracts are signed by each parish for elementary and for some high schools, and many parishes—especially those in the inner city—pay below scale. In 1973, 88 percent of lay elementary teachers earned less than $8,000. A rough calculation suggests that 70 percent are below the $8,000 figure today. By contrast, religious teachers are paid between $2,000 and $3,000, plus their food and housing. Thus a full complement of religious teachers would lower actual per pupil costs by about $100.

In an average parish today, about half the school income comes from parish subsidy, and in an average parish school, the per pupil cost (elementary) is $460. About 25 percent of the faculty are religious teachers.

Most of the minorities and lower-income families attending Catholic and other private schools are concentrated in inner-city areas, the fringes of these areas within the central cities, and in small towns and rural areas. The school's in these areas are the smallest in the system. Among Catholic schools, inner-city schools were 90 percent of the urban schools in size (averaging 319 students in 1973–74), and small town and rural schools only 62 percent (averaging only 221 students). The inner-city schools in particular have the oldest school plants in the system, with consequent inefficiencies, such as high fuel and maintenance costs.

In school enrolling minorities, there is for all practical purposes no religious membership requirement. Only about 1.5 percent of the membership of the American Catholic church is black, but almost 7 percent of Catholic school students are black. A miniscule proportion of Catholics are Oriental or American Indian. But these two groups comprise 1 percent of Catholic school students. In some dioceses, the Catholic schools serve high percentages of minorities. The Montgomery (Ala.) district schools of the Mobile diocese have more than a 50-percent non-Catholic enrollment (1973–74). In the entire diocese, which covers Mobile and southern Alabama, 32 percent of all students were black, and 24 percent non-Catholic in 1975–76. Birmingham diocese, which covers north Alabama, was 43 percent black and 30 percent non-Catholic. The Catholic schools in the District of Columbia (1974–75) were 77 percent minority at the elementary level and 50 percent minority at the high school level. About 88 percent of the system's non-Catholic students were minority students; 22 percent of the students in District Catholic schools are non-Catholics.

The typical inner-city Catholic school has the highest tuition of all Catholic schools. Most Catholic elementary school tuitions range from $250 ot $500 a year now. These tuitions are subsidized by the presence of religious teachers and by parish subsidies. Real costs in 1976–77 exceeded $500 per pupil on average in all Catholic schools. And because of their small size and outdated physical plants, costs were higher in the inner-city Catholic schools. Parishes there do not have the membership to help support the schools sufficiently. Most inner-city school tuitions appear to range from $350 to $800 per pupil (with a substantially reduced rate for a family's second child), and some go as high as $1,700.

Catholic systems have attempted a number of approaches to help support their inner-city schools. But most dioceses—especially in large eastern cities—are now in substantial fiscal trouble. (Boston, which mortgaged the physical plant of the entire diocese in commercial loans to finance its construction program of the late 1950s and early 1960s, has reportedly not made the interest payments on its debt in the recent past.) Each year, the Diocese of Brooklyn—the largest diocese in the U.S.—must begin to subsidize a larger number of its schools. Its central resources have fallen while demand has increased, and the diocese has had to cut subsidies to individual schools. In a number of cities, the parish-based structure of the inner-city schools has obscured the impending crisis.

In Chicago, for example, the archdiocese "loaned" inner-city parishes most of its accumulated building fund—its capital for building new schools—to cover the operating deficits of the inner-city parishes. In the inner city, school budgets account for over 80 percent of parish expenditures. The diocese did not count these loans, which are unlikely ever to be repaid, as subsidies. In Philadelphia, each parish banked its own building fund and reserve fund in commercial banks. As neighborhoods changed and parishes became more non-Catholic and lower income, they dipped into the accumulated reserve funds. Those funds are almost completely expended now, and some other source must be found to replace them if the inner-city schools are to survive.

SHOULD PRIVATE SCHOOLS SURVIVE? IF SO, WHY?

Private schools are disproportionately important to minority and lower-income students. Quite clearly they do attract parents who seek to put their children in better schools. But this must be regarded as surprising. Inner-city private schools run almost entirely from revenues generated within the community. They spend one-quarter to one-third the amount per pupil spent by the public schools in the large cities we examined in a recent survey. They typically had much higher pupil-teacher ratios than the public schools; inner city private schools average about 32 pupils compared to (to use the example of New York City) 25 in the public schools. They have an austere classroom setting, with antique classrooms, few books in the library—if there is a library—and virtually no equipment. In the most successful inner city private school in the country, Holy Angels on the South Side of Chicago, about $300 is spent per pupil during the 12-month school year, and pupil-teacher ratios reach 42. But these schools have a reputation for performing. Typically their students read at or slightly below grade level, which is 1 to 2 years above median in the public schools by grade 6. Holy Angels boasts that half of its eighth grade graduates eventually graduate from college. And more than half of Holy Angels 1,300 students receive public assistance. Examining a matched public and private school sample, Hancock found that private school children entered first grade with a slightly lower I.Q. than public school students, but by the sixth grade were reading 1.5 to 2 years above the public school students.

Private schools serving inner city children have a reputation for excellence. We asked a sample of minority parents who enrolled their children in Catholic schools in large cities what, in their opinion, distinguished Catholic schools from public schools. Ninety percent responded either discipline or academic training. A small percentage responded "religious training." The parents, in our open-ended questions, tended to equate discipline with academic training. Eighty percent thought that the private schools were safer than the public schools as well. Ninety percent thought that the Catholic schools provided a better education. We should expect such a high percentage of positive answers, since we were interviewing parents who chose Catholic schools. But their responses concentrated on discipline, academic quality and safety far more than did those of the white middle-income parents in our survey. White parents thought much more highly of their public school alternatives than did black parents, and saw little difference in quality, discipline and safety.

The concern that private schools damage public schools arises from a misunderstanding about the sources of competition felt by public schools. Virtually all public schools attended by middle- and upper-middle income families are chosen by those families. The white flight from the cities has been encouraged, even developed, by the quality of suburban public schools. The only schools that do not feel the force of competition are those educating the lowest-income groups. Although the lowest-income families do move, they move within a restricted area and are, for the most part, not free to move into the neighborhoods of better schools.

Private schools provide them with alternatives, and thereby set standards that the public schools must meet. Without the private schools in the inner city, the public schools are freed of the embarrassment that such impoverished institutions are able to do a better job.

From my investigations, I have concluded that "local control" is not the means that encouraged most American schools to satisfy the demands of the parents. Parents seeking better schools chose them. If and when the schools displeased them, the parents chose "better" schools elsewhere. Choice is the mechanism that makes most public schools accountable today, not the political organization of the parents. By attracting students from the public schools, the private schools will provide inner-city parents with the prod they require to deliver better educational services.

Further, suburban public schools have been responsible for the racial isolation of minorities in the central cities. Private schools have given parents the option of better schools without the necessity of moving to the suburbs. The private schools have kept the cities more integrated than they would be without them. In our study, we found private schools to be better integrated racially than the public schools serving comparable income groups.[5]

THE ADVANTAGE OF THE TAX CREDIT APPROACH

In supporting low income parents in their educational choice, without question the federal government will help prevent inner-city schools from closing. But Constitutional concerns aside (and I believe the tax credit-tax deduction approach for religious institutions has already been confirmed as constitutional by the Court), the funding must not go directly from the government to the private schools (nor to the public schools for the same reasons.) The inner-city private school's financing is so precarious that it must focus a great deal of attention on those who offer it a chance of financial stability. If the government gives that promise, the school's attention will turn from parents to the government.

The connection of the school to its parents is a precious resource. The school is able to encourage—even require—the parents to work with it, and the parents know the school needs their efforts. The participation in private inner-city schools by parents is extremely high, approaching 90%. The success of a school so underfunded and undermanned depends on this parent participation. And the parent participation is what makes the school so effective a center of community life. Direct funding of the school will upset this balance, making the school look toward the city to solve its problems, and making the parents thing their services are not needed, not called for or not valuable (the parents could be replaced by experts).

Furthermore, when parents, knowing they have a choice and are voluntarily doing what they are doing, choose to pay tuition to a school, they have a sense of running the school. Finally, when the CORE school, or any private school, dissatisfies parents, they make their dissatisfaction known by pulling out of the school. Either the school must have many children waiting in the wings to come into the school, or it must change its ways to satisfy the parents who are leaving, or it will fail. Parents are less likely to "supervise" the schools when they do not pay the bill themselves, and the larger a share of total income the tuition bill represents, the more likely the parent is to scrutinize (and support) the school more intensely. Funding which minimizes the importance of tuition to the school, and lowers the real cost of tuition to the parent makes the private school less likely to succeed with inner-city children.

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[5] Thomas Vitullo-Martin, "The Function of Private Schools in the Integration of Metropolitan Areas" (Unpublished manuscript, 1977). This paper draws heavily on research supported by a basic research grant of the National Institute of Education "Parents, Policies and Political Structures" (completion date: March, 1978.)

An important virtue of this system is that parents must pay $1 out of every $2 increase in costs. It is still important for the school to cut costs and increase its productivity. It is still important for parents to contribute their services. The parents in fact pay large eductional bills, and are constantly aware of the full cost of the education they are paying for. (In many cases, the true cost for one child will be 20% of total gross income for the year.) The arrangement helps make an important point symbolically: education is not free. It is costly, it is valuable.

Finally, we should note the great advantage of this approach over the administration approach. The administration's bill is confined to aid families with above median incomes whose children are in college. The proposed tax refund bills helps all families, but especially the lower-income families, choose the schools which are better. The approach will make public schools more efficient, by reinjecting competition into their world. If the public schools were confident that they were doing the best job that could be done, they would not be concerned that the proposed legislation made it a little easier for parents to choose private schools. As matters now stand, public schools have great advantages. The are tuition free. At the elementary level they have lower pupil-teacher ratios. They spend much more per pupil, from twice to six times as much as private schools. The costs to parents who choose private schools will still be quite high even with this bill, but its aid is sufficiently high to insure that—even if at great cost to the parents—an alternative choice is possible. For this reason, the proposal to delete the refundability aspect of the tax credit is not desirable. It eliminates aid for those whose incomes are lowest and who need the private school alternative.

PREPARED STATEMENT OF DR. E. G. WEST*

In my testimony I shall contend that the supporters of this bill could make even stronger arguments for it if they relied a little more on important, but elementary, economic logic. I shall demonstrate my case under the following three headings: first, the degree of benefit to children of low income families; second, the total costs to the treasury; third, the fate of the legislation in the light of recent Supreme Court interpretations of the First Amendment.

BENEFITS TO LOW INCOME FAMILIES

In recent years Congress has considered several bills to permit federal tax deductions for individuals paying tuition at nonpublic schools. Apart from the legal problems, experience has shown that these bills have confronted considerable political opposition. This is because tax deduction favors higher income groups for it provides a benefit that varies positively with income. Since the American income tax system is a graduated one, a benefit gives a greater tax relief to a high-income taxpayer than to a low-income taxpayer.

In an attempt to avoid this difficulty, later bills proposed tax credits that gave an income-constant benefit. That is, the creditable amount was subtracted directly from the taxpayer's bill, not from her on his income. High and low income taxpayers were to receive the same size benefits as long as both had precredit liability equal to or in excess of the available credit. This modification still faced a serious equity objection, however. The new tax credit systems failed to get assistance to low income families who had little or no income tax liability for the credit to offset.

The outstanding feature of the Packwood/Moynihan proposal is that it completely avoids this objection. For this reason, this proposal constitutes the most persuasive and important tax credit scheme that has appeared so far. The amount of the credit is 50 percent of tuition payments up to a total credit of $500 per student. But if the taxpayer is entitled to a credit greater than the amount of his tax liability, the difference will be refunded to him in cash. This must be interpreted to mean that where income tax liability is zero then non-income taxpayers will stand to qualify for tuition credits up to $500 per student. It is this provision that has a revolutionary potential for low income groups. But there is a further point on the side of equity that has not been made in past discussions.

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Most of the private schools in America have religious affiliations. As such they have been able to take advantage of the fact that contributions to them are deductible under the tax codes as they relate to charities in the broad sense of that term. Insofar as parents have been able to give "contributions" in lieu of tuition, they have already been receiving the equivalent of some tax credit. There is, indeed, some evidence that this has been happening.[1] Clearly this advantage has been made to the benefit of income taxpayers exclusively, and within the income tax paying group it has benefited the higher income individuals progressively. What the Packwood/Moynihan legislation will do is to spread the advantage to the poorer families who use private schools (and these are considerable in number), families who pay no income tax at all.

Finally, although the new proposal is very modest in the size of the tax credits, it will, nevertheless, present at the margin much more opportunity among the low income groups for choice. At present when they elect for private education, they have to pay their share of the public school taxes as well. This opportunity cost will now be offset by the extent of the tax credit—in other words the cost of using the private sector will be reduced. Hitherto the privilege of exercising meaningful choice in schooling has been largely concentrated in the hands of the rich. What the new proposal will do is to provide "fairer shares in choice". And insofar as choice promotes competition the result will be an education that is more effective and less costly.

COSTS TO THE TREASURY

The proponents explain that their legislation will, according to the Joint Committee on Taxation estimates, result in a 1980 revenue loss to the Treasury of $4.7 billion. This calculation omits an important and elementary economic consideration. There is a consensus in conventional economics that monopoly increases costs and competition lowers them. In the absence of the tax credit legislation, or some alternative scheme, most participants in the debate agree than in the long run the last vestiges of education in the private sector will virtually disappear. In this event the present near monopoly of publically provided education will become a full monopoly. For this reason we can expect further increases in costs, and these have not appeared in the current reasoning. Conversely, insofar as the tax credits promote choice and competition there will be a new downward trend on costs, not only in the private sector, but in the public sector also. This will mean, in turn, that even though the Treasury may lose a revenue of $4.7 billion, its need for expenditure on education up to, and even beyond, this figure may be less.

With respect to higher education much depends on the trends in enrollments in the absence of the tax credit. All parties seem to agree that, if nothing is done, enrollments will decline with increasing severity because of the expected increases of costs. This, in turn, will mean a lower investment in professional skills, or what economists call "human capital." To the extent that other forms of human capital formation, such as on-the-job training, are imperfect substitutes for formal higher education, there will be just as much a break in economic growth as there would be if there were a check on physical capital expansion. Less growth means less income generated, and the latter implies less revenue for the Treasury. Thus, the shortfall for the Treasury in the absence of tax credits could be even more than the $4.7 billion that Packwood and Moynihan claim to be the cost of their proposals.

Another key aspect of cost concerns possible changes in the whole structure of educational finance that the present Packwood/Moynihan proposal may bring. The present structure relies, to a significant degree, on student loans. The tax credit proposal comes at a time when the student loan system in America is at its lowest ebb in terms of efficiency. To the extent that the tax credit system begins to supersede the conventional loan system, there could be an important source of cost saving for future years.

The source of the inefficiency in the American Federally Guaranteed Loan system is the unprecedented and high rate of defaults. Table 1 illustrates the growth in defaults over the last four years.

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[1] R. D. Reischauer and R. W. Hartman, "Reforming School Finance," The Brookings Institution, 1973, p. 143.

Donald A. Erickson and others, "Crisis in Illinois Nonpublic Schools," Final Research Report to the Elementary and Secondary Nonpublic Schools Study Commission, State of Illinois, (The Commission, 1971; processed).

TABLE 1.—THE GROWTH OF DEFAULTS IN U.S. GUARANTEED STUDENT LOANS 1974 TO 1977

[In millions of dollars]

Fiscal year	Claims on defaulted student loans paid by the Federal Government	Amounts collected against default
1974	55.2	4.2
1975	71.7	7.6
1976 (15 mo)	105.5	10.0
1977 (estimated)	148.8	8.7

Source: "Chronicle of Higher Education," Sept. 6, 1977.

By the end of September 1977, the government was estimated to have paid out $436 million in claims from lenders and to have collected on $33.8 million of bad debts. According to the recent study by the General Accounting Office, about one of every six of the $4.5 billion worth of loans made to over four million students under the Guaranteed Student Loan Program was not paid back after the students completed their schooling or withdrew. To "internalize" the cost of these growing defaults, or, in other words, to switch the burden of defaults from the taxpayer to the nondefaulting student class, would mean charging all student borrowers at a rate of interest well over 24 percent per annum! Clearly this program cannot continue, judging from its present performance.

There seem to be two reasons why the loan system has failed. First, the banks have very little incentive to collect payments on loans once they are defaulted, since the federal government provides a substantial guarantee for payment of these loans. The incentive to default, meanwhile, is quite high and some students even declare bankruptcy in order to avoid repaying. The General Accounting Office's study illustrated the case of a psychiatrist earning about $31,500 a year who owed $8,700 including interest, and a professional basketball player earning $85,000 a year who owed $3,500 plus interest, both of whom never began to repay their educational loans.

When first proposed by economists in the early 1960s, the loan scheme was envisaged to use the already substantial machinery of the income tax establishment to collect interest and repayments. The incentives of individuals to default against the income tax authorities is likely to be considerably smaller than present incentives. (And bankruptcy cannot be pleaded as an excuse for nonpayment of income tax.) What is interesting about the Packwood/Moynihan proposal is that it can be treated as a return to the philosophy of the loan system as originally intended and described—a system that does use the income tax machinery for collection. It is true that Packwood and Moynihan do not present their scheme in such a light, and they speak of the facility as providing state aid. Nevertheless the burden of their argument is that unless their scheme is adopted many students will not receive higher education, and ultimately the government will receive less in tax revenues. Conversely if their tax credits are successful, users of their system will eventually "pay back" to the income tax authorities a higher volume of tax revenues than they otherwise would. In this sense the Packwood/Moynihan system can be regarded as a scheme that stimulates a loan scheme and moves in the direction of efficiency in "lending" in contrast to the present conventional loan system.[3]

It is not being argued here that the cost savings from the supersession of the present loan system would be sufficient to offset the $4.7 billion of cost that the sponsors of the bill quote. One can foresee, however, no likely improvement in the present loan system and, if anything, defaults are likely to impose increasing costs. These can be expected to be of such a magnitude as to make the comparison of the two systems not without some significance.

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[3] Insofar as critics may argue that the provision of tax credits for human capital and not physical capital results in horizontal inequity, there is an argument for a special "graduate" tax on the accumulators of human capital. The Packwood/Moynihan legislation does not preclude this possibility from discussion. As Mr. Moynihan observed (Congressional Record, Sept. 25, 1977), the sponsors of the bill are "open to suggestions for modifying and improving it, and look forward to the careful consideration that it will receive as it moves through the Congress."

At the same time it should be remembered that the accumulators of physical capital are allowed certain tax privileges to encourage them to undertake "healthy" rates of growth. A tax credit for human capital, especially at the modest rates proposed in the present bill, might no morethan offset the privileges for a physical capital formation.

JUDICIAL INTERPRETATION OF THE TAX CREDIT BILL

One possible problem with the tax credit bill must be faced and anticipated. This is the question of constitutionality. Mr. Moynihan gives considerable attention to this problem in his Report to the Senate (Congressional Record, September 26th, 1977). I shall contend that his argument can be strengthened considerably, again by demonstration of some economic reasoning.

The possible constitutional "problem" with the proposal that some critics will point out is that, because the plan provides credits that are refudnable (e.g., to individuals who don't earn enough to qualify for income tax), the scheme will be transformed into one of tuition reimbusements. These are direct payments that can be spent in parochial schools, and as such they will be regarded as "aid to religion." Again, even without rebates, income tax credits may not be acceptable to the Courts, because if credits were restricted to parents with children in schools that conformed to government regulations, such regulations would involve "excessive entanglement" (to use the Supreme Court's current terminology) between Church and State. On the other hand, if the credit were available without such regulations the Courts would have no evidence that public aid was not being employed to finance the religious component of parochial schooling.

Some experts have replied that since tax credits represent aid to the parents, not to the school or religious organization, they should not be regarded as unconstitutional. If, moreover, the credit is limited to a fraction of tuition paid, it can be argued that it finances only the secular portion of the education.

The fact is that the recent *Nyquist* case refused to allow the argument of family directed aid as distinct from denominational school directed aid. Moreover the *Nyquist* Court appeared to view any attempt to show that the public subsidy financed only the secular part of education as being fraught with almost insuperable "entanglement" difficulties.

In his response to the Supreme Court's latest stance, Mr. Moynihan relies on the argument that the Court itself is wrong in its interpretation of the Constitution. Many will sympathize (including the present writer) with this argument that historically interpreted, the First Amendment attempted primarily to insure against a state religion. Some will also sympathize with his claim that tax credits provide modest amounts of aid anyway, and will protect a pluralistic system that was intended by the Founding Fathers.

Mr. Moynihan's argument, however, would be more persuasive if he had focused on the Free Exercise Clause of the First Amendment, instead of the Establishment Clause. The Free Exercise Clause states that Congress, in its attitude to religion, shall make no law "prohibiting the free exercise thereof." The fact is that a system that taxes everybody to support a public school system prohibits in degree the ability of those parents who normally patronize a parochial school. Under such a system, whenever the parent chooses a parochial school he forgoes the opportunity of receiving a "free" education in the government sector. The forgoing of this opportunity, to the economist at least, is the very essence of the term "cost." In other words a public sector, so financed, automatically imposes costs on the private and parochial sector. As such it cannot be denied that the result is some degree of prohibition of religious education and therefore of religion.

Mr. Moynihan defends his tax credit system on the grounds that *aid* to parochial schools is legitimate in the strictest historical interpretation of the First Amendment. To the extent, however, that the so-called "aid" is nothing but a return of the parochial taxpayers' public contributions, the correct viewpoint is that a previous "prohibition" of the religious sector is cancelled out. It is the deletion of a previous error rather than a provision of a (debatable) right to state help.

Some will argue that, in the case of those who qualify for no income tax but receive the tax credit for education, the state, in the sense of other taxpayers, is indeed involved. Such an argument, however, can be firmly rebutted. First, income tax is not the only revenue source to finance education. Revenues flow from several types of taxes including sales taxes and property taxes which are particularly regressive. It is not unreasonable, therefore, to view the refunded credit to persons who do not qualify for income tax as a refund offsetting other taxes that they pay. Moreover, because a person does not pay income tax in the current period, this is not to say that he will not pay it in future periods of his lifetime. Indeed, the correct way to view the individual taxpayer's contribution to education is as a contribution from his lifetime income. Over his lifetime he will go through several stages of income levels and social positions. He or she will pay indirect taxes at all of these stages. After leaving school the individual will pay taxes of various kinds on his earnings. When married, but before having children, the individual will contribute probably to direct as well as indirect taxes. When children arrive, the pre-school period of their lives will coincide with continuing tax payments by their parents. The same tax payments will continue through the school age and after.

TABLE 2.—DISTRIBUTION OF TAXES SUPPORTING PUBLIC EDUCATION

[As a percent of income; 1960 census year]

	Family income—									
	Under $2, 000	$2, 000 to $2, 999	$3, 000 to $3, 999	$4, 000 to $4, 999	$5, 000 to $5, 999	$6, 000 to $6, 999	$7, 000 to $7, 999	$8, 000 to $8, 999	$10, 000 to $14, 999	$15, 000 plus
All taxes:										
Whites	7. 83	4. 72	4. 00	3. 69	3. 59	3. 37	3. 00	2. 58	2. 14	2. 63
Nonwhites	7. 73	4. 16	3. 45	2. 87	2. 61	2. 55		2. 48	2. 83	3. 08

Source: W. Norton Grubb, "The Distribution of Costs and Benefits in an Urban Public School System" National Tax Journal, vol. XXIV, No. 1, March 1971, table I.

TABLE 3.—ABSOLUTE DOLLAR CONTRIBUTIONS OF WHITES TO PUBLIC EDUCATION (APPROXIMATE)

	Family income								
	$2,000	$2,000 to $2,999	$3,000 to $3,999	$4,000 to $4,999	$5,000 to $5,999	$6,000 to $6,999	$7,000 to $7,999	$8,000 to $9,999	$10,000 to $14,999
Amount	$117	$118	$140	$166	$197	$219	$225	$215	$268

Source: Calculations made of percentages in table 2 applied to median income of each column.

Table 2 shows one recent piece of investigation on the distribution of costs of public schools systems. It revealed that people in the very poorest family income categories were paying nearly 8 percent of their annual incomes in education taxes. Table 3 produces the absolute dollar contributions of families in different income groups. These figures, it should be remembered, related to the 1960 census year. To make them representative of present day conditions we would have to multiply by a considerable inflation factor. Using this table, I have estimated elsewhere that a poor family contributes a total undiscounted lifetime contribution in education taxes of $7,380. We have to remember also, that the poor typically receive an education that is of a shorter duration than others. So while their cost contributions are lower than average so are their benefits. It is, therefore, not clear that they are not contributing enough to finance themselves entirely.

Finally, it may be retorted that if the burden of our argument is that each individual family pays for its own education through its lifetime taxes, then the correct response of government is to withdraw from education entirely rather than provide tax credits. This, however, does not necessarily follow. The fact that we argue that so far there has been no demonstration that the typical individual family does not pay for its education over its lifetime does not necessarily mean that the same family could obtain the same funds without intervention. It could indeed do this if there were a perfect capital market. In this case the family would pledge its future income and borrow money accordingly. Insofar as there are serious capital market imperfections, however, and some economists argue strongly that this is the case, it is possible that the government can provide the equivalent of a capital market via the tax process. The resultant government facility is a financial one rather than an educational one. Individuals would receive financial facilities in the same way as they receive help in the purchase of long-lasting durables such as houses. The important point remains that when the individual family is viewed as spending its own money through a simulated loan scheme, one can no longer complain that it is relying on public funds, or that those funds are aiding in religion or anything else.

Finally the possibility remains that some individual families will be net receivers from the system, that is they will receive more in benefits than the lifetime education tax contributions. A loan system of the income contingent kind, however, will have the same effect ex post. When people join such a scheme they are uncertain of their future income prospects. They will probably agree to some kind of "insurance" element built into the scheme so that should it turn out they are more prosperous than expected they will contribute more to the revolving loan fund than people in the opposite position. They will do this ex ante with the balancing benefit that, should their income earnings fall below those expected, they will enjoy the "insurance" of contributions from others. Again, this is a financial system not an educational one.

In any case even if some families do receive more in benefits than they have contributed it is almost impossible to conceive of a family that pays less tax contributions from its lifetime income than the modest amounts of tax credit that are involved in the Packwood/Moynihan bill.

SUMMARY

There is more economic justice in the Packwood/Moynihan bill than the authors realize. In America everybody pays taxes including the poorest. The bill provides an opportunity for poor people to retrieve some part of their education taxes and spend it directly. This gives them the extra advantage of exercising choice. Hitherto, choice has been concentrated in the higher income sectors. The Packwood/Moynihan proposal will promote "fairer shares in choice" in education.

Hitherto, middle class families using parochial schools have been able to take advantage of their status as charitable institutions. Contributions to charitable institutions are tax deductible. Some parents have managed to arrange a quid pro quo with parochial schools so that their contributions are received in lieu of fees. In this way income taxpayers who use parochial schools have been at an advantage compared with poorer users who do not pay income tax. The Packwood/Moynihan legislation will equalize the tax advantages among all income groups who use parochial schools.

The calculation of the authors of a cost to the Treasury of $4.7 billion in 1980 is a gross overestimate. First, insofar as their proposal will stimulate competition, and since competition is generally acknowledged to put downward pressure on costs, some part of the revenue loss anticipated will be offset by a decrease in necessary expenditures for education. Second, in the absence of a tax credit scheme the consensus is that enrollments in higher education will fall. This means a lower formation of human capital. In turn, this implies a lower rate of growth of the national product. A lower national product, however, means a smaller tax base. The Treasury could end up losing several billion dollars on this account, and the Packwood/Moynihan proposal should be costed on the basis of an alternative revenue scenario that takes a reduced tax base into account.

The proposal could next reduce substantially another important cost in the higher educational system—the cost of increasing student loan default rates. Student loan defaults have been increasing because of inadequate incentives to the banks to police the offenders, and also because there are high incentives to student borrowers to default. The Packwood/Moynihan Tax Credit Scheme could simulate a loan system that uses the income tax machinery as the collection device. This will cut down the incentive to default and the cost of administration of such a "loan scheme" would be much lower than the present loan system.

Stronger arguments could be made in support of the bill with respect to its constitutionality. If the focus is placed on the Free Exercise Clause of the First Amendment, the imposition of general taxes upon nonusers of the public system can be interpreted as prohibiting in degree the activities of voluntarily chosen religious schools. What a tax credit scheme does is to focus on the fact that individuals themselves contribute the "public funds" in the first place. The receipt of a tax credit can then be argued to be the cancelling out of a previously prohibited act of government against parochial schools. The tax credit scheme can also be viewed as an attempt by government to provide a financial facility. In the absence of efficient capital markets to allow families to borrow money on pledges of their future incomes, the government may well be able, through the use of its income tax machinery, to provide the equivalent of such a loan market. But this, to repeat, is a financial facility and not an educational one. The constitutionality of the Packwood/Moynihan legislation, therefore, could not be on firmer ground.

VITA, E. G. WEST

DEGREES

B. Sc. (Econ.), London England (External), 1948 Economics (Exeter): M. Sc. (Econ.), London England (External), 1959 Economics; Ph.D., London England, 1964 Economics.

ACADEMIC

Honours

Member of the Editorial Panel of Advisors, Institute of Economic Affairs, London.

Member of the Mont Pelerin Society.

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ACADEMIC APPOINTMENTS

Lecturer in Economics, Guildford College of Technology, England, 1951–56.

Senior Lecturer-Economics, Oxford College of Technology, England, 1956–62.

Lecturer in Economics, University of Newcastle upon Tyne, England, 1962–65.

Post Doctoral Fellow, University of Chicago, 1965–66.

Reader, University of Kent at Canterbury, England, 1966–70.

Professor, Carleton University, Ottawa, 1970.

Visiting Research Scholar, University of California, Berkeley, 1974.

Visiting Professor, Virginia Polytechnic Institute and State University, Blackburg, 1975–77.

Other Professional Experience

Consultant to the British Restrictive Trade Practices Commission, 1968–70.

Chief Examiner in Economics (External Students), London University, 1967–69.

RESEARCH

Books and monographs

"Education and the State: A Study in Political Economy." Institute of Economic Affairs, 1965. Second edition, with a preface of 35 pages surveying subsequent discussion and contributing new points, 1970.

"Readings in Political Economy." London: Institute of Economic Affairs, 1967 (with M. Blaug, H. Beales ond Sir Douglas Veale).

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"Proceedings of the Economic History Association Conference 1968"—A contributed section entitled "Educational Externalities and the Quantity of Schooling in 19th Century Britain."

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A specially written introduction (35 pages) to "The Theory of Moral Sentiments"—new edition 1969 of Adam Smith's classic, New York: Arlington House Publishers.

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Book reviews (Recent)

"Homage to Malthus" by J. S. Nickerson, Queen's Quarterly, Kingston, Ontario Fall 1976.

"Education and Economic Growth." Fritz Machlup, Journal of Economic Literature, Fall 1976.

Work in progress

Economics of Higher Education: The present crises in the finance of higher education in Canada and the U.S.

Economics of Lower Education: The economic reasoning in current rulings of the U.S. Supreme Courts and the effects on the economics of public and private education.

Economics of Minimum Wages in Canada and the U.S. A special analysis of Canadian data is planned for 1977–78.

History of Economic Thought: Karl Marx's theory of the firm.

Public choice aspects of the historical economic literature with special attention to Hume, Smith, Mill, Marx, Wicksell and Pareto.

Preparation of papers on Adam Smith's Social and Economic Philosophy.

Research grants

Canadian Council Grant for preparation of "Education and the Industrial Revolution." Published in May 1975.

Ontario Economic Council Grant for Study of Educational Loans. 1974–75.

Preparation of a script for the film "Adam Smith and the Wealth of Nations, 1975–76." (Goodrich Foundation.)

Grant from The Institute for Research on Public Policy (Montreal) for the preparation of an analysis of the policy options in Canadian Higher Education.

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"Teachers' Manual for 'Economics Today'." Harper & Row, (April 1978).

Senator PACKWOOD. I will let you gentlemen handle the order of your appearances as you want.

STATEMENT OF MSGR. EDWARD F. SPIERS, EXECUTIVE DIRECTOR, CITIZENS FOR EDUCATIONAL FREEDOM

Monsignor SPIERS. I am Monsignor Spiers, executive director of Citizens for Educational Freedom, a nonsectarian and nonpartisan association. We appreciate the opportunity to testify. We support this Tuition Tax Credit Act and respectfully urge the members of the committee to recommend its enactment. I only summarize some reasons from the longer statement which has already been submitted for the record.

First of all, we believe that S. 2142, does implement the primary rights of parents, although these rights were confirmed 50 years ago in the 1925 Pierce ruling, yet because of inflation and increased taxes freedom of educational choice has now becomes a privilege only for the affluent. We must also remember that elementary and secondary education are mandated by State law. We are not discussing, therefore, the exercise of some optional constitutional right.

S. 2142 is a bipartisan response to the pledges of the 1976 party platforms and it is also an echo of that persistent desire of many State legislatures to provide some relief for families, particularly the low, middle-income families, who pay both taxes and tuition.

S. 2142 is nondiscrininatory because it includes all tuition payments to institutions which are in compliance with the Civil Rights Act, from kindergarten through graduate, public or nonpublic, secular or sectarian. Of its 15 million beneficiaries, 50 percent are in public colleges, 16 percent in nonpublic colleges, 33 percent in nonpublic elementary and secondary schools.

I have only one comment on its constitutionality. Congress certainly has the authority to levy taxes and exceptions therefrom; this bill simply amends the Internal Revenue Code to classify a tuition payment the same as a contribution to an educational or religious institution, a procedure which already has been affirmed in the *Walz* decision.

Also, this bill differs essentially from *Nyquist* because in that decision, the Court said because 85 percent of the beneficiaries attended Catholic elementary secondary schools, it was unconstitutional. In this bill only 23 percent of the beneficiaries attend Catholic elementary as secondary schools.

S. 2142 is uncomplicated; it involves taxpayers and Government directly, there is no institutional entanglement, religious or otherwise; it will not set up any costly bureaucracy.

Certainly S. 2142 involves reasonable cost, an average of only $300 per beneficiary. This amounts to less than 1 percent of the annual Federal budget and less than 4 percent of the annual cost of public education and in this country today.

When you contrast this with the fact that 7.7 million of these beneficiaries are now enrolled in nonpublic institutions, saving $17 billion a year to the taxpayers, it should be encouraged.

This bill aids primarily low middle-income families. I was very discouraged to read what Secretary Joseph Califano said last week about this bill, that tuition credit was a ripoff for the wealthy: "We cannot afford poverty programs for people who are not poor." Well, hopefully, the HEW witness tomorrow will review, before he comes here, the 1975 Census Bureau report which states that 80 percent of family incomes are below $22,000 and the median $14,000. There is no major difference between the average family income of those in public or nonpublic schools. In fact, the 1974 Census Bureau reported that the median income of nonpublic school families was only $15,000.

When you study the inner city, the data are more startling. The median income of 3,913 families with children enrolled in the parochial schools in the city of Baltimore, inside the city limits in 1974—the median income was only $9,200, and 22 percent were below $6,000.

Two years ago, as a Research Associate at Catholic University School of Education, I surveyed 10 large metropolitan centers to find out how many parochial schools actually served inner city areas and what kind of students were enrolled. In just 10 inner cities I found 666 schools with 248,000 students, 46 percent black or Hispanic, or other minorities, and 13 percent not Catholic. These data did not include other nonpublic schools in those areas, nor did they include the noncore part of those cities.

Edwin Fiske, the New York Times education writer, in an article on October 9, estimates one-seventh of the Nation's 10,000 Catholic schools can be classified as inner city schools. Here in the District of Columbia, last year, there were 18 Catholic elementary schools serving 6,000 students in the area east of Rock Creek Park at an average tuition ranging from $400 to $500. In the same area, there were eight high schools serving about 3,000 pupils, at an average tuition ranging from $800 to $900.

While that tuition doesn't sound like a heroic sacrifice for an affluent person, it certainly is for these families. You heard Victor Solomon here this morning; he summed it up best in the September issue of the New York magazine when, asked why people make such sacrifice, he said, "Other people have alternatives, why not poor people, why not blacks?" We could add, why not middle income families, black and white.

Tuition pass-through is no threat. It would be counterproductive. It would run these schools out of business.

In closing, I quote the October 9 issue of the New York Times: "All the research indicates that the basic element in the appeal of parochial schools in the inner city, as well as elsewhere, is educational quality."

In the December 25 edition of the Washington Post, in an article written by Lawrence Feinberg describing Our Lady of Perpetual Help School, it was noted that 42 percent of its 515 students are not Catholic. "Most importantly," he said, "academic achievement is much higher than in Washington public schools, its students can read according to standardized tests at nearly the National standard for their grade level, a relative rarity here." And then he noted that the public eighth grade average was 2½ years below the norm.

Nonpublic schools are a worthwhile stimulus to public schools in cost and academic achievement. They also arrest the economic deterioration of city neighborhoods, they are a bonus, a barometer of hope, not just for parents and students, but for all people who live, work, or do business there.

S. 2142 helps needy families, it honors the right of free choice, it guarantees survival of consumerism and pluralism in education. It does all of this by permitting parents to use some of their own tax money for an education already mandated by Government.

Thank you.

Senator PACKWOOD. Thank you.

Mr. Comar.

STATEMENT OF EMILE COMAR, EXECUTIVE DIRECTOR, CLARION HERALD, NEW ORLEANS, LA.

Mr. COMAR. I am Emile Comar, of New Orleans, executive editor of the Clarion Herald newspaper; executive director of the Louisiana Catholic Conference; and vice president of the Louisiana Federation, Citizens for Educational Freedom.

Perhaps because of the lateness of the hour maybe all I should do is invite you down to the Mardi Gras in 3 weeks and go home. I will keep my remarks short.

I wish to thank Senator Long and members of the committee for the invitation to testify and to extend a special note of appreciation to Senator Packwood, Senator Moynihan, and all other Senators on this committee who are cosponsors of the tuition tax credit bill.

My words of appreciation are voiced in behalf of the parents of 156,000 children who attend nonpublic schools in Louisiana. For I speak today primarily as a parent, who has put five children through nonpublic elementary and high schools in New Orleans and four of the five through nonpublic colleges in the region.

I urge the committee to consider the present legislation not as a tax "credit" but as a tax "incentive" to parents to encourage them to continue the support of nonpublic schools.

The Government provides incentives to business and industry to keep the free enterprise system moving. I submit that it is time for the Congress also to provide incentives to the individuals who provide the funds to keep dual and competitive systems of education operating in this free Nation. I do not think that any of us favor a government monopoly in education but without some incentives in the arena of nonpublic education we are headed toward that monopoly.

The U.S. Commissioner of Education, Ernest Boyer, said in Washington in late November of 1977: "Private education is absolutely crucial to the vitality of this Nation and public policy should strengthen rather than diminish those essential institutions." Here I make a local reference to Louisiana. For example, I mentioned that we have 156,000 nonpublic elementary school students in my State. If those children attended the government schools, a total of $182 million additional in State and local tax funds will be needed for the public school system of Louisiana.

The cost of government schools, and the parallel impact on taxpayers, increases as nonpublic school enrollment drops. In Louisiana, the enrollment in nonpublic schools has dropped from 163,000 in 1970–71 to 156,000 in 1975–76. At the same time the cost of educating a child in a government school has risen from $737 to $1,153.

The bill now before you provides across-the-board incentives—or relief—to taxpayers in that it assists parents with educational costs whether their children attend public or nonpublic elementary school, high school, trade school, college, or university. We strongly support this legislation, feeling that any bill which would provide tax credits at the college and university level alone would be highly discriminatory.

The long-suffering parents of 5 million nonpublic elementary and high school students, for example, do not have the many benefits now afforded to college and university students and to the institutions they attend.

In closing, and now speaking in behalf of Citizens for Educational Freedom, we commend the proposed Packwood-Moynihan bill for its recognition of the needs of lower income families.

We recommend the legislation because it would provide, too, assistance to middle income groups, who are the strong backbone for maintaining a dual school system in the United States.

Those parents, who are paying taxes for the increasingly expensive government schools, are now deserving of some help from this committee, from the Senate, from the House, and from President Carter.

I want to mention I have filed along with a copy of this brief statement some supporting documents which you may be interested in. You expressed interest, for instance, in how old the private or Catholic school systems were. The New Orleans school system was founded in 1725, the Catholic school system, and there is a paper attached here which addresses itself to many of the questions raised by this committee.

Do we serve minorities? Forty-seven percent of our kids in nonpublic schools in New Orleans are minority students.

Do we serve non-Catholics? Fourteen percent of all students in our Catholic high schools are non-Catholic.

So there are a number of statistics in that paper which was presented at Mayor Moon Landreiu's conference in New Orleans on education 3 months ago. You may be interested in some of those figures.

Senator MOYNIHAN. I think 1725 is the winner so far. Anybody here from St. Augustine?

[No response.]

STATEMENT OF RABBI MORRIS SHERER, AGUDATH ISRAEL OF AMERICA

Rabbi SHERER. Gentlemen, my name is Rabbi Morris Sherer. I am the president of Agudath Israel of America, which is a 55-year-old national orthodox Jewish grassroots movement headed by the country's most eminent Jewish scholars. I shall be mercifully brief; I request that my formal statement be placed into the record.

Senator PACKWOOD. It will be.

Rabbi SHERER. Thank you.

I want to make several points. No. 1: During the past 17 years, I have appeared before hearings of congressional committees on behalf of our organization to testify for justice for nonpublic school parents, and during these two decades I have noticed that certain changes have taken place.

There is a complete change in climate on the American scene as far as the mood of the people is concerned regarding Government aid for parents of children in nonpublic schools. Whereas 17 years ago very few people even understood what we were talking about, today most Americans feel that something had to be done.

As you, Senator Moynihan, so correctly point out in your formal statement: "The people of this Nation are ready for it." To that, I say amen.

Understandably, I am here to advocate passage of the Packwood-Moynihan Tuition tax credit bill initiated, as its name would indicate, by you Senator Packwood and by you Senator Moynihan, of whom I am very proud to be a constituent.

Point No. 2: There is another development during these last 17 years since my first appearance before a congressional committee; namely, during the early years the public debate was beclouded with the general feeling that this is a Catholic issue. By now that myth has been exploded, albeit not totally, and is on the verge of being disregarded by most Americans.

It is now crystal clear that it is not a Catholic issue nor is it a Jewish issue nor is it a Lutheran issue. The public now senses in ever-increasing numbers that at stake is an American issue. As you, Senator Moynihan, pointed out before, it is an issue of public purpose.

There is another point that I would like to make, which Dr. West spoke about in such scholarly fashion. Let me express it in a manner the public would understand a little more clearly: In the light of the skyrocketing costs of nonpublic tuition in education, the entire concept of freedom of choice in education has become a mythical illusion. It seems to me that pocketbook persuasion which denies a parent the right to exercise his freedom to send his child to a nonpublic school is no less an evil than all-out coercion.

I will not discuss the constitutional aspects; you have heard and will hear a lot about the legalities of the issue. To me the case is crystal clear: The concept of tax credits, which your bill projects, is already provided for in many other areas, such as retirement income, foreign income taxes, work incentive programs, and so on.

If tax credits can be used to encourage business, why should not simple logic dictate that this very same method also be used to encourage Americans to exercise freedom of choice in education?

In the name of justice, to this committee and to the entire Congress to make out of the concept of diversity in education not merely a slogan but a real possibility.

I hope that the Packwood-Moynihan Tuition Tax Credit bill will help make this goal a reality.

Thank you.

Senator PACKWOOD. Rabbi, you are very persuasive, you have convinced me. I have no questions of the panel. I am sorry we have kept you here so long during the day until we got to you this afternoon.

Pat?

Senator MOYNIHAN. Mr. Chairman, I would like just to make one observation which I think might bring together the three very persuasive statements we have heard from persons who have committed much of their life to a cause, the cause of liberty and freedom, and I hope you are proud of what you have done, but, Rabbi, you spoke of the change in climate, and I do remember this.

I came down to join the Kennedy administration in 1961 when this was a very difficult issue, if you remember, and I had written for the Reporter Magazine an article on this subject. Admittedly it had to do with Catholic feelings, but I must say the chill in the Kennedy White House that anybody should be speaking about this matter was palpable as far away as the Department of Labor where I occupied a very insignificant position, but there were those who knew I was there and knew I had raised this.

"Why do you raise this subject?" Because it has to do with freedom of choice. And how different it is to note that, this year, both political parties, in their platforms have endorsed this measure, this proposition.

The Commissioner of Education has spoken clearly in favor of this kind of thing.

We jump over the Secretary of HEW, and we get to the President of the United States who during his campaign, equally committed himself to this kind of effort.

Rabbi SHERER. I just want you to know, if you need any further proof as to the change in climate, Senator Moynihan, about 17 years ago, the first time that I spoke before a congressional committee in the Kennedy years, my testimony was so shocking to the great editors of the New York Times, they considered it so newsworthy material, that they put my picture on the front page of the New York Times and published the entire testimony. Today, 17 years later, I am sure that it will be relegated to page 99.

Senator MOYNIHAN. "Demented man makes extraordinary proposal in public in Washington." Exactly.

Well, there are, persisting in a public interest. This is not an enterprise for the shortwinded but you have persevered.

Rabbi SHERER. Thank you.

Senator PACKWOOD. Gentlemen, thank you very much.

[The prepared statements of the preceding panel follow. Oral testimony continues on p. 202.]

STATEMENT OF EDWARD F. SPIERS, EXECUTIVE DIRECTOR, CITIZENS FOR EDUCATIONAL FREEDOM

I am Msgr. Edward F. Spiers, executive director of Citizens for Educational Freedom, a nonsectarian and nonpartisan, association (1) whose principal purpose is realization of the primary rights of parents in education, both in tax and non-tax-supported institutions.

This association is a chartered organization as well as a movement working in coalition with more than a score of like-minded groups. It strongly supports the Tuition Tax Credit Act expressed in S. 2142, and respectfully urges members of this committee to recommend its enactment as legislation. I will outline several reasons for this.

SUPPORTS THE PRIMARY RIGHT OF PARENTS

Although it is self evident that the child does not belong to the State, it was necessary for the Supreme Court in its 1925 *Pierce* ruling to defend a corollary of this truth by explicitly guaranteeing parents the right to "direct the up-bringing and education of children under their control," and the right to satisfy compulsory education requirements in either a public or a nonpublic school.

During the past 50 years, that landmark decision of freedom has become a hollow victory. As education costs increase and income taxation rises, more and more poor through middle-income families must forfeit their constitutional right of free choice in exchange for a free education. Freedom of educational choice has become a function of wealth—a privilege only of the wealthy.

It must be remembered that education is mandated in all States for a minimum number of years. We are not considering, therefore, the exercise of an optional constitutional right, such as freedom of speech, which does not require the government to provide a citizen with an auditorium. We are here concerned with compulsory education. By current financing policy, the government is effectively limiting right of free choice in education by enforcing a discriminatory tax policy.

S. 2142 would remedy this discrimination by amending the Internal Revenue Code to permit a tax credit for part of tuition payments. This avoids any funding of institutions; the taxpayer is allowed to use some of his own tax money for a public purpose, education of his family. This legislation simply makes possible in practice what the Supreme Court confirmed in 1925: the primary rights of parents in education.

IMPLEMENTS THE 1976 PLATFORM PLEDGES OF BOTH PARTIES

S. 2142 is a bi-partisan response to the pledges expressed in both party platforms which promised correction of this inequity among taxpayers. The Democratic platform reads:

"The Party renews its commitment to the support of a constitutionally acceptable method of providing tax aid for the education of all pupils in non-segregated schools in order to insure parental freedom in choosing the best education for their children."

The Republican platform states:

"We favor consideration of tax credits for parents making elementary and secondary tuition payments. . . ."

The fact that 50 Senators currently co-sponsoring S. 2142 are almost evenly divided in party affiliation emphasizes its need and timeliness. This legislation also echoes the voices of many state legislatures which Justice Powell, in the recent *Wolman* v. *Walter* decision, described as "the persistent desire of a number of states to find proper means of helping sectarian education to survive."

This Act directs benefits to families, not to institutions. In 1917, Congress first authorized tax benefits for contributions "to religious, charitable, scientific and educational non-profit organizations." This legislation merely amends the Internal Revenue Code to extend the tax benefits to tuitions as well as contributions to educational institutions, whether public or nonpublic, college or precollege, secular or sectarian, provided they are in compliance with the Civil Rights Acts.

S. 2142 would provide assistance and incentive for assuming an educational burden which is in the public interest. Congress finds it less costly to taxpayers if government encourages individuals to use some of their own funds rather than underwrite the entire cost through taxes. Tax benefit for such purpose is not a constitutional question. It is a policy question to be decided by Congress and state legislatures according to their understanding of the best interests and wishes of their constituents and of equity among taxpayers.

INCLUDES ALL TUITION-PAYING FAMILIES

S. 2142 includes all families and persons paying tuition for education, from kindergarten through graduate school in either public or nonpublic institutions. It does not discriminate against elementary and secondary students and because of this is also being supported strongly in the House of Representatives unlike tuition credits for college students only. A tuition tax credit acceptable to both the House and Senate must include college and precollege students.

According to this legislation, tuition tax credits will be available to about 15 million students of whom 50 percent attend public college, 16 percent, nonpublic colleges, and 33 percent, nonpublic elementary and secondary schools. It will also benefit families who, for special reasons, pay tuition for attendance at public schools and adults who enroll in vocational training institutions.

Eventually, this bill will benefit almost all the Nation's families. Although its benefits are universal, it does not create a class of permanent dependents. The assistance given to families and individuals is temporary during the time of educational need and is limited; it encourages self-help but not waste.

It would be unbelievable for Congress to support a tuition tax credit bill which ignores elementary and secondary students for whom the Government mandates education. College education is optional. S. 2142, therefore, is not only a valid response to the pledge of both parties, it is also, philosophically, the correct answer to the right and need of all tuition-paying families.

AIDS THOSE WHO ARE MOST IN NEED

Unless some form of assistance is soon provided, alternative elementary and secondary education will disappear where it is most necessary today—in the inner-city areas of our large metropolitan centers. Despite what some detractors charge, very few nonpublic institutions are finishing schools for the wealthy, although many of them are in danger of being finished by even moderate tuition charges. Most of these schools serve low to middle income families and a good proportion are serving families in the poorest inner-city neighborhoods. Two years ago, as a research associate in the Catholic University School of Education, I surveyed ten large metro areas to determine how many parochial schools served inner-city areas and the type of students enrolled. Results are shown in the table below.

The data certainly evidence the widespread presence of nonpublic schools in these 10 core cities: 666 schools; 248,057 students; 46 percent Black, Hispanic or other minorities; 13 percent non-Catholic. It should be emphasized that the data include only schools serving the inner or core city area; the data do not represent the total for the cities surveyed. Edward Fiske, the New York Times education writer, in an October 9, 1977 article, estimates one-seventh of the 10,000 parochial schools "can be classified as an inner-city school."

1975–76 ENROLLMENT BY ETHNIC GROUPS IN CATHOLIC SCHOOLS SERVING INNER-CITY AREAS OF LARGER METRO DISTRICTS

Metro area	Schools	Students	Minority groups: Blacks	Minority groups: Spanish surname	Minority groups: Others	Minority groups: Totals	Non-Catholics
1. New York City	121	57, 860	6, 365	16, 201	1, 157	23, 723	2, 314
Percent			11	28	2	41	4
2. Brooklyn	81	43, 000	8, 170	10, 320	430	18, 920	860
Percent			19	24	1	44	2
3. New Orleans	69	32, 109	11, 238	963		12, 201	6, 743
Percent			35	3		38	21
4. Chicago	82	25, 942	14, 268	5, 967	1, 038	21, 273	10, 117
Percent			55	23	4	82	39
5. Philadelphia	53	22, 144	9, 300	664	221	10, 185	2, 214
Percent			42	3	1	46	14
6. Boston	46	20, 609	1, 649	824	206	2, 679	610
Percent			8	4	1	13	8
7. San Francisco	50	19, 326	1, 739	3, 672	2, 899	8, 310	2, 899
Percent			9	19	15	43	15
8. Cleveland	56	16, 223	2, 696	487	162	3, 245	2, 109
Percent			16	3	1	20	13
9. Los Angeles	75	14, 838	1, 335	3, 858	148	5, 341	297
Percent			9	26	1	36	2
10. Washington, D.C	33	10, 608	6, 895	530		7, 425	2, 758
Percent			65	5		70	26
Total	666	248, 057	63, 555	43, 486	6, 261	113, 302	30, 929
Percent			25. 7	17. 5	2. 5	45. 7	12. 5

According to the 1974 Census report, the median income of families with children attending nonpublic schools was less than $15,000, with 20 percent having incomes less than $10,000. However, in 1974, the Baltimore Catholic School Office surveyed the 3913 families which patronized its City of Baltimore elementary schools and found their median income was only $9234, with 22 percent of the incomes less than $6000 (cf report).

For such families even modest tuition charges represent heroic sacrifice at its best, an impossible option at worst. Here in the District of Columbia, in 1976–1977 there were 18 Catholic elementary schools serving almost 6000 students in the area east of Rock Creek Park at an average tuition range of $400–500, which represented 75 percent of per pupil costs. There were also eight secondary schools in the same area which served about 3000 students, with tuitions ranging from $525–1500 and averaging close to $800. Tuition relief is just as necessary for these families as it is for families whose members attend public universities and colleges where average tuition and fees in 1975–76 was $513 (NCES, 1977).

REPORT ON INCOMES OF FAMILIES WITH CHILDREN ENROLLED IN CATHOLIC ELEMENTARY SCHOOLS IN THE CITY OF BALTIMORE, MD., 1974

Family income	Number of families	Percentage of families	Cumulative percentage
0 to $1,999	144	4	4
$2,000 to $3,999	266	7	11
$4,000 to $5,999	422	11	22
$6,000 to $7,999	597	15	37
$8,000 to $9,999	692	17	54
$10,000 to $11,999	699	18	72
$12,000 to $13,999	433	11	83
$14,000 to $15,999	204	5	88
$16,000 to $17,999	158	4	92
$18,000 to $19,999	102	3	95
$20,000 to $21,999	67	2	97
$22,000 and above	129	3	100
Total	3,913	100	

Note: Summary of family incomes—1st quartile, $6,400; median, $9,234; 3d quartile, $12,500.

Source: Archdiocese of Baltimore School Office (Richard Lawrence).

In a democracy one need not be challenged why he wishes to exercise the constitutional option of fulfilling government education requirements. For the curious however, who wish to know why citizens continue to seek educational freedom, the statement of Victor Solomon, Congress on Racial Equality, in the Sept. 12, 1977 issue of New York is enlightening: "Other people have alternatives. Why not poor people? Why not blacks?" It could be added: why not middle-income families, black and white?

Even though measurement of educational quality is always tricky evidence suggests that the majority of parochial inner-city students are reading above grade level in sharp contrast to area public schools. In the article previously referred to, the New York Times states: "All of the research, though, indicates that the basic element in the appeal of parochial schoools—in inner-city areas as well as elsewhere—is educational quality." This together with moral values and school/classroom order, provides poor and middle-income families with an educational alternative which they find desirable.

In a feature story in the Dec. 25, 1977 Washington Post, Lawrence Feinberg paid tribute to the academic quality of Our Lady of Perpetual Help Elementary School located in a run-down neighborhood in Anacostia. Noting that 42 percent of its 515 students are Protestants, Feinberg wrote: "Most importantly, academic achievement at Our Lady of Perpetual Help is much higher than in Washington's public schools. Its students can read, according to standardized tests, at nearly the national standards for their grade levels, a relative rarity here." Later in the article he noted that the school's eighth-graders were only a half year below national reading norms while "those in D.C. public schools average 2½ years below the norm, and those in Anacostia scored even lower last year."

Operation of nonpublic schools thus represent a worthwhile challenge to the public system both in operating costs, usually one-fourth to one-third of public costs, and in quality of academic achievement. They also serve to arrest the economic deterioration of city neighborhoods and are a bonus—a barometer of hope—not just for the parents and students enrolled, but also for all who live, work, or do business there.

The tuition tax credit proposed in S. 2124 will aid parents and children who are most in need of alternative quality education. It will do this by simply permitting a citizens to use some of his own tax money to provide members of the family with an education mandated by the government. In doing so, the government will honor the constitutional right of freedom of choice, as well as guarantee the survival of consumerism and pluralism in education. It will do all this at a fraction of the cost of public education.

TUITION TAX CREDITS ARE CONSTITUTIONAL

Republic students of law believe there is no constitutional problem in this legislation which simply amends the Internal Revenue Code to provide limited tax relief for all families and individuals who pay tuition. Congress, they argue, has both the authority to levy taxes and to provide exemptions therefrom to promote a public purpose such as education. In this case, Congress finds it is less costly to taxpayers if it offers an incentive to persons to use some of their own funds than to underwrite the entire cost through taxation. More importantly, Congress deems it preferable that education not become a governmental monopoly.

It is inconceivable that both political parties would have pledged some type of tax relief for tuition-paying families, specifically mentioning nonpublic education, if they had serious doubts about the constitutionalty of legislation such as S. 2142. Nor is it possible to believe that dozens of bills would have been introduced in the current Congress in both the House and Senate which are supported by a majority of Congressmen, if tuition credits are unconstitutional.

Those who make such a charge usually cite in their defense the Supreme Court's 1973 *Nyquist* ruling. S. 2142, however, differs essentially from what the Court considered in that decision:

1. *Nyquist* involved New York state legislation, not legislative action by a coequal branch of government.

2. Besides tax credits, the New York legislation included several direct services to sectarian elementary and secondary schools which the Court rejected because of too much "entanglement."

3. The principal difference, however, is that the New York plan provided tax benefits for only nonpublic elementary and secondary students, 85 percent of whom attended Catholic schools. While Chief Justice Burger, together with Justices White and Rehnquist, rejected this argument as standing the Constitution on its head, S. 2142 affects a broad, universal class—all tuition payments, from kindergarten through graduate school, to public and nonpublic, secular and sectarian institutions. Of its approximate 15 million beneficiaries, 66 percent are college students; 50 percent attend public institutions; only 22 percent attend Catholic elementary and secondary schools.

Far from arguing that S. 2142 may be unconstitutional because it includes tuition payments to sectarian schools, it should be evident that any tuition relief legislation that excludes this group would be clearly discriminatory and unconstitutional. The Supreme Court in the *Walz* and other decisions was emphatic in stating that though government may not spend public funds directly for religious purposes, it may indirectly aid them by foregoing the collection of taxes it would otherwise impose. Accordingly, the Internal Revenue Code permits tax deductions for contributions to charitable, educational, and religious institutions. This legislation simply removes the distinction between donations and tuition payments to religious-sponsored schools.

Whether tax benefits can be granted to nonpublic education is no longer a constitutional question. It is a policy question to be decided by Congress—and state legislatures—according to their understanding of the best interest and wishes of their constituents and of the equity among taxpayers.

UNCOMPLICATED CONSTRUCTION AND ADMINISTRATION

S. 2142 is uncomplicated in its meaning and construction which will be appreciated by those who benefit and by those who administer it. No one will find it difficult to subtract one-half of tuition payments up to $500 per student from taxes owed. The administration of this bill will not require even one additional tax collector. Therefore, all its benefits will go directly to those in need and not be lost in administrative costs. It involves no entanglement of government with any institution; it is a direct relationship between the taxpayer and the government.

In that respect alone, it is preferable to further expansion of the current grants program. According to this bill, an adult who wishes to obtain technical or vocational training can enroll and immediately know the assistance for which he is eligible. In a grant program, the need or time opportunity will probably have passed before the application has moved through an endless chain of government personnel.

REASONABLE COSTS

According to its current provisions, S. 2142 has an estimated tax loss of $4.7 billion, which is approximately $300 per beneficiary. The reasonableness of this cost can be seen in the perspective of several facts:

1. The annual federal budget is currently over $500 billion; tuition tax credit will cost less than one percent of the annual budget.

2. Annual expenditures for public education, according to the National Center for Education Statistics, were estimated in 1976–77 at $97 billion (local revenues, $38 billion; state, $45 billion; federal, $13 billion). By fiscal 1979, this expenditure will be close to $110 billion annually. Tuition tax credits will amount to about four percent of the annual cost of public education.

3. There is an annual savings to taxpayers caused by the 7.7 million students who attended nonpublic educational institutions. Based on current per pupil costs for public precollege and college institutions, this represents an annual savings of $15 billion; by fiscal 1979, the annual savings should approximate $17 billion.

SUMMARY

Citizens for Educational Freedom, with other allied parent groups, believe that there is a critical need of some tax relief for all tuition-paying families. It believes, together with the leaders of both political parties, that such legislation must include equal benefits for parents of the 7.7 million nonpublic students who comprise about 12 percent of the national enrollment. It believes that exclusion of this segment would be politically inexpedient, constitutionally discriminatory, and a denial of the primary rights of parents in education.

It believes that the S. 2142 Tuition Tax Credit Act introduced by Senators Bob Packwood and Pat Moynihan with the support of the majority of the Senate is a constitutional, practical, uncomplicated and reasonable solution to increasing costs which threaten the ability of poor to middle-income families to attend public colleges as well as nonpublic elementary, secondary, and college institutions.

STATEMENT OF EMILE COMAR, NEW ORLEANS, LA., EXECUTIVE EDITOR, CLARION HERALD

I am Emile Comar of New Orleans, executive editor of the Clarion Herald newspaper; executive director of the Louisiana Catholic Conference; and vice-president of the Louisiana Federation, Citizens for Educational Freedom.

I wish to thank Sen. Long and members of the committee for the invitation to testify and to extend a special note of appreciation to Sen. Packwood, Sen. Moynihan and all other Senators on this committee who are co-sponsors of the Tuition Tax Credit bill.

My words of appreciation are voiced in behalf of the parents of 156,000 children who attend nonpublic schools in Louisiana. For I speak today primarily as a parent, who has put five children through nonpublic elementary and high schools in New Orleans, and four of the five through nonpublic colleges in our region.

I urge the committee to consider the present legislation not as a tax "credit" but as a tax "incentive" to parents to encourage them to continue the support of nonpublic schools, while they also pay their fair share of taxes for the operation of the government schools.

The government provides incentives to business and industry to keep the free enterprise system moving. I submit that it is time for the Congress also to provide incentives to the individuals who provide the funds to keep dual and competitive systems of education operating in this free nation. I do not think that any of us favor a government monopoly in education but without some incentives in the arena of nonpublic education we are headed toward that monopoly.

As U.S. Commissioner of Education Ernest Boyer said in Washington in late November of 1977: "Private education is absolutely crucial to the vitality of this nation and public policy should strengthen rather than diminish those essential institutions."

Not only is it imperative that we maintain freedom in education, it is also important that we recognize the economic impact of nonpublic schools. For example, I mentioned that we have 156,000 nonpublic elementary and high school students in Louisiana. If those children attended the government schools, a total of $182,000,000 additional in tax funds would be needed for the public school system of Louisiana.

The cost of government schools, and the parallel impact on taxpayers, increases as nonpublic school enrollment drops. In Louisiana, the enrollment in nonpublic schools has dropped from 163,000 in 1970–71 to 156,000 in 1975–76. At the same time the cost of educating a child in a government school has risen from $737 to $1,153.

The bill now before you provides across the board incentives—or relief—to taxpayers in that it assists parents with educational costs whether their children attend public or nonpublic elementary school, high school, trade school, college or university. We strongly support this legislation, feeling that any bill which would provide tax credits at the college and university level alone would be highly discriminatory.

The long suffering parents of five million nonpublic elementary and high school students, for example, do not have the many benefits now afford to college and university students and to the institutions they attend.

In closing, and now speaking in behalf of Citizens For Educational Freedom, we commend the proposed Packwood-Moynihan bill for its recognition of the needs of lower income families.

We recommend the legislation because it would provide, too, assistance to middle income groups, who are the strong backbone for maintaining a dual school system in the United States.

Those parents, who are paying taxes for the increasingly expensive government schools, are now deserving of some help from this Committee, from the Senate, from the House and from President Carter.

Attached is a parish-by-parish breakdown of education costs which support the story enclosed and which may be of interest to you for local comparisons.

* * * * * * *

The figures are taken from table V expenditures per pupil, State department of education, data processing and school research. The table shows:

Net expenditures and allotments for current operation: 1969–70, $511,530,572.62; 1970–71, $617,406,424.15.

Expenditures per pupil, average daily membership: 1969–70, $607.10; 1979–71, $737.90.

1970–71 LOUISIANA SCHOOL FIGURES

Parish	Public school students	Per pupil cost, public schools	Non-public school students	Tax savings effected by non-public schools
Acadia	11,428	$735.59	2,962	$2,178,817.58
Allen	5,926	710.46	21	14,919.66
Ascension	9,455	731.64	2,093	1,531,322.52
Assumption	5,603	598.24	512	306,298.88
Avoyelles	9,435	714.67	1,489	1,064,143.63
Beauregard	7,255	728.02		
Bienville	4,215	861.63	170	146,477.10
Bossier	18,253	762.18	839	639,469.02
Caddo	53,594	755.37	8,532	6,444,816.84
Calcasieu	38,326	711.65	3,755	2,672,245.75
Caldwell	2,435	697.28		
Cameron	2,203	1,057.60		
Catahoula	3,407	826.43		
Claiborne	3,871	781.03	478	373,332.34
Concordia	5,318	848.94	831	705,469.14
De Soto	5,502	786.35	493	387,670.55
East Baton Rouge	64,067	791.20	12,487	9,879,714.40
East Carroll	3,137	800.58	687	549,998.46
East Feliciana	3,927	769.86	662	509,647.32
Evangeline	6,669	828.13	2,891	2,394,123.83
Franklin	6,689	781.23	138	107,809.74
Grant	3,944	721.45		

1970-71 LOUISIANA SCHOOL FIGURES—Continued

Parish	Public school students	Per pupil cost, public schools	Non-public school students	Tax savings effected by non-public schools
Iberia	14,593	655.41	2,469	1,618,207.29
Iberville	7,596	920.24	1,468	1,350,912.32
Jackson	3,387	908.35	290	263,421.50
Jefferson	63,713	699.92	27,834	19,481,573.28
Jefferson Davis	7,645	794.83	952	756,678.16
Lafayette	27,906	685.69	4,865	3,335,881.85
Lafourche	18,937	694.76	2,350	1,632,686.00
La Salle	3,412	755.30	----------	----------
Lincoln	6,047	785.02	912	715,938.24
Livingston	10,187	682.91	----------	----------
Madison	3,828	694.36	499	346,485.64
Morehouse	8,286	707.98	745	527,445.10
Natchitoches	8,411	832.72	1,022	851,039.84
Orleans	107,557	721.56	43,100	31,099,236.00
Ouachita	17,352	684.40	2,310	1,580,964.00
Plaquemines	5,649	569.88	2,277	1,297,616.76
Pointe Coupee	5,123	724.18	1,825	1,321,628.50
Rapides	27,837	735.41	3,659	2,690,865.19
Red River	2,093	794.03	265	210,417.95
Richland	6,394	810.85	245	198,658.25
Sabine	4,666	765.64	303	231,988.92
St. Bernard	13,268	641.91	1,920	1,232,467.20
St. Charles	8,276	736.25	932	686,185.00
St. Helena	2,774	935.53	----------	----------
St. James	5,338	781.65	641	501,037.65
St. John	5,720	737.53	2,185	1,611,503.05
St. Landry	21,118	759.28	4,648	3,529,133.44
St. Martin	8,862	788.37	1,241	978,367.17
St. Mary	15,812	611.95	2,128	1,302,229.60
St. Tammany	15,756	687.69	3,238	2,226,740.22
Tangipahoa	14,472	788.36	3,371	2,657,561.56
Tensas	2,577	986.57	335	330,500.95
Terrebonne	20,323	621.77	2,800	1,740,956.00
Union	4,451	721.67	199	143,612.33
Vermilion	9,764	790.92	1,302	1,029,777.84
Vernon	8,455	666.73	----------	----------
Washington	5,316	803.36	282	226,547.52
Webster	9,809	794.92	235	186,806.20
West Baton Rouge	3,571	805.93	821	661,668.53
West Carroll	3,593	793.70	58	46,034.60
West Feliciana	2,130	840.56	----------	----------
Winn	3,721	807.35	127	102,533.45
City of Monroe	9,786	726.30	----------	----------
City of Bogalusa	5,351	799.18	684	546,639.12
(Lab schools)	(1,081)	----------	----------	----------
Total	836,710	[1] 737.90	163,534	119,158,222.98

[1] Average.

Note: Totals vary slightly from official tabulation due to rounding off of numbers.

Source: Louisiana State Department of Education, January 1972.

DISCREPANCY IN PER PUPIL COST IS WIDENING IN STATE

Widening discrepancies in per pupil spending in Louisiana's public schools leave the state wide open for the type of court action now forcing California and Texas to revamp the entire structure of educational funding, according to the Louisiana Federation, Citizens for Educational Freedom.

CEF Jan. 13 released State Department of Education figures which show a one-year increase in public school spending of more than $100 million for the fiscal year ending last June 30.

Average per pupil spending statewide increased from $607 to $737. But the range of spending among the 66 school districts was from more than $1000 per child in Cameron parish to less than $600 per child in Plaquemines.

State Department of Education figures reveal a new record high public school operating cost of $617,406,000 for 1970-71 as compared with $511,530,000 for 1969-70.

The figures, which take into account the amount spent on high school and elementary school students from local, state and federal funds, will be published later this year in the State Department of Education's annual bulletin.

CEF said in analyzing the figures that they:

1. Show a widening gap between per pupil spending from one school district to another. Similar discrepancies in per pupil spending led a state court in California and a federal court in Texas to order those states to restructure completely the method of public school financing.

2. Reflect again the need for state aid for nonpublic school students, whose parents save taxpayers more than $100 million by maintaining non-public education for 163,000 students who otherwise would be in public schools.

Emile Comar, executive director of CEF, said that the $100 million increase in public school spending is due primarily to the $1200 a year pay raise given to public school teachers by the 1970 Legislature. Another $400 increase was given each teacher by the 1971 Legislature, but the impact of this raise on total public school spending will not be known until all figures are compiled next winter.

"The teacher pay raise was supported by most of the responsible organizations and media voices in Louisiana, including CEF, and nothing in our comparison is intended to indicate that it should not have been given," said Comar. "But the facts are that the total tab for public education is skyrocketing, even as the number of students decreases."

The average daily membership of students in public schools for 1970–71 was 836,710 as compared with 842,583 in 1969–70. Thus enrollment was down by 6000, while spending was up $106 million, or 17 percent.

Comar said at least two major publications in Louisiana recently have expressed concern over the rulings of the California Supreme Court and a three-judge federal court in Texas which have attacked the disproportionate spending between one school district and another as being unconstitutional and discriminatory.

"The California decision, for example," said Comar, "compared the spending of Beverly Hills schools ($1232 per child in 1968–69) and nearby Baldwin Park schools ($578 per child for the same year)."

"On the basis of a decision that such disproportionate spending is discriminatory because it did not provide 'equal educational opportunity' the California court ruled that California must restructure its entire system of support of public education," Comar said. "Then a three-judge federal court in Texas took the same position."

Such cases are important to Louisiana because of the wide differences in per pupil outlays among the 64 parish and two city school systems in the state.

For example, per pupil spending in Cameron for 1970–71 was $1057 as compared with a low of $569 in Plaquemines. In Tensas parish it was $986 per child, an increase of $431 over the previous year. Per pupil spending in Iberia parish, for example, was only $655, an increase of $109.

It is generally true that so-called "rich" parishes, with strong local tax support for public schools, have less money to spend per pupil than "poor" parishes which have lower local taxes, thus depending more on statewide taxes for their schools.

"It should be obvious in the light of current legal action in other states and common sense reasoning that Louisiana is going to have to reassess its method of funding education," Comar said.

"We believe that the same common sense reasoning will dictate that in any reevaluation of education spending in Louisiana responsible public officials must take into account the contribution of the nonpublic school parent and the justice of that parent receiving some return from taxes for the education of the nonpublic school child," Comar said.

"In 1970–71, 163,534 children were educated in nonpublic schools," he added. "If these children had been in public schools the cost of public education, based on current per pupil spending, would have been $119 million higher.

"The nonpublic school parent has been, and is, supporting the rising cost in both public and nonpublic education. But with voter resistance to new taxes as evident as it is today, the incoming Legislature is going to have to pool every asset in order to keep education afloat in Louisiana—and one of the major assets for taxpayers is the existence of so many nonpublic schools."

Louisiana's per pupil cost of public education took another sharp increase in 1975–76 but nonpublic schools saved taxpayers from having to pay another $182,000,000 for education, the Louisiana Federation, Citizens for Educational Freedom, said today.

State Department of Education figures, scheduled for publication this Spring, reveal that the average cost of educating a public school student rose to $1,153, highest in Louisiana's history and a $120 per child increase over last year's figure of $1,033, CEF reported.

During the 1975–76 period nonpublic schools educated 156,371 students, saving taxpayers the $182,000,000 that would be necessary to educate that number of students in public schools.

CEF said the number of public school students increased from 828,[illegible]92 in 1974–75 to 831,682 in 1975–76. During the same period, the number of nonpublic school students rose from 154,403 to 156,371.

"The number of students in Louisiana schools has reached the highest level since 1972–73," said Kirby J. Ducote, executive director of CEF. "But the interesting point is that the per pupil cost of public education continues to rise no matter whether public schools gain or lose students."

"The fact that nonpublic schools continue to educate a substantial portion of Louisiana school children is a saving factor for Louisiana taxpayers, who would be faced with huge new tax bills if nonpublic schools did not continue to bear the cost of educating more than 156,000 students."

The Department of Education figures show that the parish with the highest cost of education is Cameron, with a per pupil expenditure of $1,616 annually. Lowest was Livingston, with a per pupil cost of $910.

Among the most populous areas of the state the highest per pupil cost was in Orleans parish with $1,254, followed by East Baton Rouge with $1,242, Caddo with $1,177, Jefferson with $1,139, Calcasieu with $1,113, Rapides with $1,063 and Lafayette with $1,083.

The fact that nonpublic schools educated 41,720 students in Orleans parish resulted in a taxpayer savings of $52,316,000.

The savings in other major population centers was as follows: East Baton Rouge, $14,427,000; Caddo, $10,044,000; Jefferson, $33,728,000; Calcasieu, $3,266,000; Rapides, $3,413,000; and Lafayette, $4,934,000.

"Parents of nonpublic school children," said Ducote, "should be commended for their double contribution to education in the state of Louisiana. For they not only pay their just share of taxes for public schools but also relieve fellow taxpayers of the cost of educating 156,000 students who presently are enrolled in nonpublic schools."

1975-76 LOUISIANA SCHOOL FIGURES

Parish	Public school students	Per pupil cost, public schools	Nonpublic school students	Tax savings effected by nonpublic schools
Acadia	11,565	$1,038	2,276	$2,499,048
Allen	5,450	1,228		
Ascension	10,636	1,104	2,149	2,372,496
Assumption	5,262	1,082	585	632,970
Avoyelles	9,502	1,110	1,093	1,213,230
Beauregard	7,265	1,060	49	51,940
Bienville	4,655	1,181	203	239,743
Bossier	18,162	1,059	1,010	1,069,590
Caddo	50,028	1,177	8,534	10,044,518
Calcasieu	36,598	1,113	2,935	3,266,655
Caldwell	2,359	1,152		
Cameron	2,136	1,616		
Catahoula	3,144	1,366		
Claiborne	3,593	1,105	487	538,135
Concordia	5,344	1,277	458	584,866
De Soto	5,818	1,101	265	291,765
East Baton Rouge	67,624	1,242	11,616	14,427,072
East Carroll	2,721	1,268	584	740,512
East Feliciana	3,854	1,079	499	538,421
Evangeline	7,558	1,204	1,842	2,217,768
Franklin	6,455	1,197	240	287,280
Grant	3,669	993		
Iberia	15,872	1,064	1,990	2,117,360
Iberville	7,498	1,599	1,125	1,798,875
Jackson	3,422	1,349		
Jefferson	68,663	1,139	29,612	33,728,068
Jefferson Davis	7,536	1,088	732	796,416
Lafayette	28,774	1,033	4,777	4,934,641
Lafourche	18,825	1,029	2,454	2,525,166
La Salle	3,516	1,045		
Lincoln	6,025	1,141	923	1,053,143
Livingston	11,795	910		
Madison	3,383	1,222	413	504,686
Morehouse	7,537	1,121	809	906,889
Natchitoches	8,802	1,244	915	1,138,260
Orleans	92,259	1,254	41,720	52,316,880
Ouachita	19,796	930	2,552	2,373,360
Plaquemines	5,351	1,021	2,303	2,351,363
Pointe Coupee	5,147	1,238	1,306	1,616,828
Rapides	27,657	1,063	3,211	3,413,293
Red River	1,955	1,351	325	439,075
Richland	5,440	1,272	477	606,744
Sabine	4,954	1,222	134	163,748
St. Bernard	12,598	1,048	2,106	2,207,088
St. Charles	8,682	1,393	1,017	1,416,681
St. Helena	2,478	1,212		
St. James	5,400	1,244	489	608,316
St. John	6,077	1,203	2,000	2,406,000
St. Landry	20,545	1,156	4,074	4,709,544
St. Martin	9,220	1,047	897	939,159
St. Mary	14,910	1,033	2,332	2,408,956
St. Tammany	19,028	938	3,091	2,899,358
Tangipahoa	15,084	1,161	3,331	3,867,291
Tensas	2,207	1,393	369	514,017
Terrebonne	22,629	977	2,449	2,392,673
Union	4,340	1,072	204	218,688
Vermilion	9,886	1,039	1,202	1,248,878
Vernon	9,015	1,062		
Washington	5,217	1,244	344	427,936
Webster	9,224	1,203	369	443,907
West Baton Rouge	3,701	1,341	714	957,474
West Carroll	3,176	1,230	235	289,050
West Feliciana	1,843	1,589		
Winn	3,907	1,340	94	125,960
City of Monroe	9,260	1,121		
City of Bogalusa	4,503	1,287	455	585,585
(Lab schools)	(1,132)			
Total	831,682	[1] 1,153	156,371	182,467,365

[1] Average.

Note: Totals vary slightly from official tabulation due to rounding off of figures.

Source: Louisiana State Department of Education, April 1977.

EXCERPTS FROM "OVERVIEW OF PAROCHIAL EDUCATION"

(by Howard Jenkins)

The superintendent of New Orleans Catholic schools said Friday (Oct. 28) the leadership of the city must work to "resolve controversies between public and Catholic schools" and added that "we cannot duck the issue of tax aid for children in nonpublic schools."

Speaking at the Mayor's Education Conference, Howard J. Jenkins said "when we have evaded that issue (tax aid for nonpublic schools) during the winter months, it has descended on us both in the hot months of the Louisiana Legislature."

Jenkins noted that public schools are supported by all taxpayers and parochial schools are financed overwhelmingly by private dollars, paid by those citizens who also pay taxes for public education.

"This latter group—as the financial squeeze continues—is the key group to which the city must appeal if educational quality for all children is to be improved," Jenkins said. "If quality education is synonymous with 'more money,' then we must convince this group that pays for both public and nonpublic education that they must put additional dollars into both systems.

"And we must reach out to those who have no children in school at all and convince them that quality education is, indeed, tied to the number of dollars spent and that the city's economy—as well as their own future—is handcuffed to the quality of the city's total educational package."

Jenkins took exception at the outset of his speech to the words "especially public education" as contained in the draft of the documents outlining the reasons for the conference.

"I take exception . . . not because there is not a great need in the public sector, but I feel deeply that our city will not move forward in unity to better our total educational system unless every citizen becomes concerned about all school children in New Orleans—including those in the public, parochial and private sectors. When we speak of children, there are no second class citizens," he said.

Jenkins called for conferences to be "honest, open and straightforward in our private and public discussions" during the conference.

"Unless we have such a free and honest exchange of information, I feel we will perhaps have an even greater degree of misunderstanding than now exists between the public, parochial and private sectors of education," he said. "Such misunderstanding need not exist at all, since we are all committed to providing the best quality education for every student who enters our doors."

Jenkins traced the development of Catholic education, from the first Catholic School in 1725, down to the present day, citing the many religious orders of priests, brothers and sisters who contributed to the parochial school system. He noted that over $100 million was spent on parochial educational facilities alone between 1935 and 1960, and that another 23 schools were started or completed between 1960 and 1963.

He said that while Orleans public schools are educating some 90,000 students, the Archdiocese of New Orleans has over 68,000, nearly half of which are in New Orleans.

Jenkins said the integration of religious truths and values with the rest of life is a distinctive mark of Catholic schools.

"In a significant way Catholic schools bear witness to the importance of religion in our local civil communities and in our society as a whole. However, we are not citing this as our only purpose. We also exist to build community."

On the subject of accountability, Jenkins said the Catholic schools have a broad decision-making concept which includes the Archdiocesan School Board, the Office of Education, the parish pastor, the local school board, principal, faculty, students and parents, as well as all parishioners.

"All these individuals and groups share in an accountability that achieves the basic goal of Catholic schools, namely the creation of a Christian educational community where human culture and knowledge is taught and experienced, enlivened and enlightened by faith in a spirit of love and freedom."

Under careful consideration, Jenkins said, it becomes obvious that the purposes and goals of the Catholic school system are comparable to all educational systems. "The major difference," he noted, "is the added dimension of religion."

Jenkins took issue with the commonly held belief that Catholic schools in New Orleans are "white" and "financially secure."

"Neither the 'white' nor 'financially secure' labels fit the Catholic schools of New Orleans, though there are those who persist in believing that our schools have drained the public schools of white students and money.

In supporting his arguments Jenkins noted:

That 47 percent of New Orleans parochial school students are children from minority families;

That between 1960 and 1977, white enrollment in New Orleans Catholic schools dropped from 39,000 to 20,000, while black enrollment over the same period rose from 9,000 to 11,700.

That Catholic schools continue to serve non-Catholics as well as Catholics, with 14 percent of its enrollment in New Orleans coming from non-Catholic families, most of them from the inner city.

Jenkins said another misconception is that New Orleans is unique in its large parochial school system. He noted that New Orleans is 11th in size of Catholic school systems in the US. and added:

"The cities that have a substantial balance between public, Catholic and other nonpublic schools are richer because of such pluralism in education. The Catholic schools of New Orleans predate the Catholic schools of other large cities. And it is perhaps because of the more than 250 years of tradition of Catholic education in New Orleans that Catholic parents demonstrate a great desire to maintain their schools."

Jenkins concluded by debunking the argument that Catholic schools are rich. He noted that while Orleans public schools are spending $1,116 per student per year, Catholic schools are spending $350 per elementary student and $800 per high school student.

"The fact is that we are not wealthy and, unless we can share in some way in the tax dollars being asked for by education, we cannot make ends meet. It should be pointed out that our total Archdiocesan school system saves taxpayers $69 million annually and that, we submit, is a major contribution to the education of children in this community."

CATHOLIC SCHOOLS

AN ALTERNATIVE IN NEW ORLEANS

I am assigned today the task of presenting to you an overview of Catholic education in the City of New Orleans and must reach back 250 years in order to do so.

Before making such a presentation, however, I would like, as Superintendent of Schools of the Archdiocese, to discuss briefly the "purposes of the conference" as set forth in the preliminary papers.

We find that this conference is designed to:

1. Provide information to conferees and to the community on the problems, needs, accomplishments, and possibilities of education, especially public education, in the City of New Orleans.
2. Provide information to conferees and to the community that would tend to correct several erroneous perceptions that constitute serious barriers to the public's understanding and support of public education.
3. Receive information from conferees and the community on the problems, needs, and possibilities of education, especially public education, in the City of New Orleans.
4. Motivate the conferees and the community to give greater general support to the development of education, especially public education, in the City of New Orleans.
5. Motivate the conferees and the community to give specific support to the various action points developed by the conference and recommended by the Mayor.

I must take exception to the words "especially public education," as contained in the draft of the documents outlining the reasons for this conference. I do so not because there is not a great need in the public sector, but I feel deeply that our city will not move forward in unity to better our total educational system unless every citizen becomes concerned about all school children in New Orleans—including those in the public, parochial and private sector.

There should be not "good, better, best" among educational facilities but all should be "best."

I submit to you the conferees, the importance of addressing ourselves to this issue of "best" for all schools. And I suggest that we be honest, open, and straightforward in our private and public discussions at this conference.

Unless we have such a free and honest exchange of information, I feel we will perhaps have an even greater degree of misunderstanding than now exists between the public, parochial and private sectors of education. Such misunderstanding need not exist at all, since we are all committed to providing the best quality education for every student who enters our doors in search of knowledge.

When we speak of children, there are no second class citizens. Whether such children attend public, parochial or private schools should not concern educators, whose sole interest should be in providing, as we said earlier, the "best" education we are capable of providing.

The theme of this conference is "Education: Everybody's Job." It is my specific job to educate childern in our Catholic schools. I would prefer to call them "parochial" schools because we are, in fact, not a school system but a system of schools, drawn together by our special mission but with great autonomy to carry out that mission.

I hope to present to you in this paper three points:

1. The history of Catholic education in New Orleans.
2. The plan under which we operate as a system of schools.
3. Some myths and facts about parochial education in New Orleans.

Two years ago, Archbishop Philip M. Hannan called for a special celebration, a prestigious banquet in commemoration of the opening of the first Catholic parochial school in New Orleans. That school was opened by Father Raphael de Luxembourg, a Capuchin priest, only seven years after the founding of the City of New Orleans.

At that celebration, marking the beginning of our 250th year of Catholic education, it was pointed out:

1. That the first parochial school opened in 1725.
2. That the Ursuline Sisters, still serving the educational community of New Orleans, first arrived in 1727.
3. That between 1818 and 1859 many other religious orders, most of whom still serve in New Orleans, came to the city to educate its children and young adults. Among them, and I name only a few, are the Sisters of the Sacred Heart, Vincentian Fathers, Sisters of Charity, Mount Carmel Sisters, Sisters of the Holy Family, Jesuit Fathers, Marianites of the Holy Cross, School Sisters of Notre Dame, Dominican Sisters, Redemptorist Fathers, Holy Cross Brothers, Sacred Heart Brothers and Christian Brothers. The list could continue on.
4. During the next 75 years, ending in 1935, there was steady progress in educational expansion under Archbishops Obin, Chapelle, Blenk, and Shaw.
5. In 1935—and continuing until 1960—there was an even greater expansion under the leadership of Archbishop Rummel, with over $100 million in building contracts let during his administration. In his 25 years, the Catholic school enrollment more than doubled, reaching 90,000 students in 1960–61, just prior to the period when the Diocese of Baton Rouge was created from a portion of the Archdiocese of New Orleans.
6. During the 1960s, Archbishop John Patrick Cody built another 23 schools in the Archdiocese to meet the demands of the post war years, with public school educators applauding such effort as a means of meeting unprecedented demands for schools.
7. In 1966, the beginning of the tenure of Archbishop Hannan, it was necessary to declare a moratorium on construction of schools. Public, parochial and private schools at the time faced a difficult financial squeeze. That moratorium is just now being lifted, with the Archdiocese of New Orleans again making an effort to build new schools to meet the demands of education within the Archdiocese.

Today, through the efforts of fourteen bishops and archbishops, and through the efforts of countless priests, religious women and men, lay women and men, there are

1. 104 elementary schools, serving 50,000 students.
2. 31 secondary schools, serving 18,000 students.

A total of 31,000 (almost half) of these 68,000 students are in Catholic schools within the city limits of New Orleans.

The incalculable sacrifices made by the people of the Archdiocese who support these schools, is, as one English writer put it, "The glory of the Church in America."

May I turn now to the question of how we function as a system of schools.

Dr. John I. Goodlad, Dean, Graduate School of Education and Director of Research, at the University of California, Los Angeles, was one of three consultants at the recent Diamondhead Conference held jointly by Orleans Public Schools and Loyola University.

To quote Dr. Goodlad: "The single school with its principal, teachers, and pupils as primary participants and parents, community residents, and citizens generally as secondary participants is the place that the education process occurs. It is the sole institution invested exclusively with educational fuctions, even though we have corrupted it with an array of non-educational and miseducative ones. It is the only place where most parents and citizens can view the practices of education in any tangible way, gain understanding of our vast educational enterprise, and secure some sense of meaningful participation." (ASCD Convention, March 1975 in New Orleans).

To quote from another participant of the Diamondhead Conference, Mr. Nat LaCour (UTNO): "All schools that have been successful, in my estimation, are the ones where there is great parent involvement."

What do these quotes have to do with "How do we function as a school system" or how are we accountable as a parochial school system?

Here's how.

Dr. Goodlad is saying, at least in my understanding, that the important unit is the school and Mr. LaCour agrees with him that parent involvement is necessary.

What structure do we use to create such involvement?

Educational accountability in our Catholic school setting includes a broad range of people and a broad range of responsible areas. Thus any complete description of accountability must be viewed from a working concept rather than from a philosophical concept. Generally speaking, educational accountability refers to those areas of responsibility all people of our Archdiocese share in implementing the goals of Catholic education to its fullest extent. Those who share accountability in Catholic education in the New Orleans Archdiocese include the Archbishop, the Archdiocesan School Board, the Archdiocesan Office of Education (and including the Office of Religious Education), the parish pastor, the local school board, the principal, the faculty, the students, the parents and last but not least all parishioners. All of these individuals and groups share in an accountability that achieves the basic goal of Catholic schools, namely "The creation of a Christian educational community where human culture and knowledge is taught and experienced, enlivened and enlightened by faith in a spirit of love and freedom." (Quoted from "Shared Decision Making," our Archidiocesan School Board's guidelines for the establishment and operation of local school boards.)

Our schools are autonomous units because they:

1. Are administered by a shared-decision making process of Pastor-Principal-Local School Board. Parents, by and large, through election process are members of the local school board.
2. Are responsible for the hiring of administrators and teachers.
3. For the philosophy of the school, quality education.
4. For the policies of the school within the guidelines of Archdiocesan Policy.
5. For quality education.
6. For the curriculum (within certain guidelines).
7. For faculty size (student-teacher ratio).
8. For the salary scale.
9. For tuitions, and
10. Are responsible for discipline.

Annual evaluation at the local level by pastor and school board ensure accountability of the principal and annual evaluation at the local level by the pastor, school board and principal ensure the accountability of the faculty. Contract renewals are based on these annual evaluations. In addition to local annual evaluation, the total program of the school undergoes an Archdiocesan Office of Education directed evaluation every five years to ensure that the local school is not only maintaining but improving the quality of both religious and academic programs. This evaluation follows the guidelines of Southern Association of self-evaluation. Parent and student input is encouraged during these evaluation processes.

My basic philosophy as superintendent—and all eight professional members of my Office of Education staff share this philosophy—is that we exist to serve, not administer, our schools, and that the key person in our educational system is the principal. All our efforts are to serve, to support, and to encourage the principal to perform to capacity.

Last spring our Office of Education's Research and Planning Committee, working on curriculum, conducted a "Needs Assessment Priority Rating Survey", an in-house survey. People surveyed were pastors, parishioners, school board members, principals, teachers, parents, students—in all 18 different groups of people connected with our schools were surveyed.

Curriculum, not finances, emerged as the number one priority in needs assessment. In essence, the purpose of our curriculum is to develop the child totally: Spiritually and morally intellectually, personally, socially and physically.

In Category 8 of the Survey entitled "Philosophy: Reasons for the Existence of Catholic Schools," the overall ranking of five items were:

1st. Development of Moral and Christian Values.
2d. Religious Education.
3d. Quality Academic Education.
4th. Development of Christian Community.
5th. Good Discipline.

Why do we exist? Why do we operate alternative schools? Why do we spend millions of dollars and efforts on 68,500 students in the Archdiocese of New Orleans?

Our reasons for existence have roots that are deep. Two thousand years ago, Christ admonished His disciples to "Go and teach all nations . . ." Picking up this challenge Christians have had a deeply significant impact on all of society in every century.

In 1792, the Catholic bishops of the United States issued a pastoral statement that said:

Catholic schools which realize the threefold purposes to: one, teach doctrine; two, build community; three, serve, are the most effective means available to the church for the education of children and young people." USCC, "To Teach As Jesus Did," Washington, D.C.: 1972, p. 6–1.

The integration of religious truths and values with the rest of life is a distinctive mark of Catholic schools, and other religious schools.

In a significant way Catholic schools bear witness to the importance of religion in our local civil communities and in our society as a whole. However, we are not citing this as our only purpose. We also exist to build a community.

This is also the theme of this conference "Education: Everybody's Job" . . . a total Community effort.

Curriculum developers in Catholic schools have always been committed to facilitating community experiences but are now more aware of a need to do this. The United States Catholic Bishops cited a view of society as being permeated with alienation, loneliness, polarization and disrespect for human life. The local parochial schools are the centers of activity in many church parishes. It is here where a nucleus of a community can be formed.

In an orderly fashion, the local school boards of education have been able to identify and respond to the educational needs of the community they serve. Thus, the school becomes a means whereby community as a concept and as a pattern of relationships tends to support, encourage, strengthen, restore and chasten.

With careful observation it becomes obvious that the purposes and goals of the Catholic School System are comparable to all educational systems. The major difference is the added dimension of religion.

In summary, my point is that our strength lies in the local control at the unit school level in developing its administrotion its policies, its philosophy and its curriculum.

Many feel, because I have heard the comments, that our parochial and private schools are white and financially secure. Well, let's consider some facts.

Neither the "white" or "financially secure" labels fit the Catholic schools of New Orleans, though there are those who persist in believing that our schools have drained the public schools of white students and money.

Let's look at some facts.

In Los Angeles, 50 per cent of parochial school children are minority.

In San Francisco, 50 per cent of parochial school children are minority.

In Manhattan, 78 per cent of parochial school children are minority.

And in New Orleans, 47 per cent of parochial school children are minority. The figure is 37 per cent if both Catholic high school and elementary schools are considered.

It is the popularly perceived notion that Catholic schools in New Orleans greatly expanded in enrollment as a result of the desegregation crisis of the early 1960's. The assumption is wrong, though widely reported.

Statistics point out the fallacy of the notion that children shifted from public schools to Catholic schools. They indicate, rather, that Catholic schools face problems similar to those in the public sector.

In 1960–61 white students in our schools numbered 38,941.

In 1976–77 only 20,200 white students attend, a decline of 18,000 white students in our schools in Orleans, which almost matches the decrease of 20,000 students in the public schools. Percentage-wise we lost many more.

During the same period, Catholic schools increased their number of black students from 9,040 to 11,700 this year.

The current white-black student ratio is less than 2–1.

Limitations which prevent Catholic schools from making even further commitment to black . . . and Hispanic . . . (and now Vietnamese) . . . students are based solely on finances.

Despite the lack of resources, Catholic schools of the city continue to serve not only Catholic children but other children residing in the inner city areas.

This year, for example, 14% of our enrollment in Orleans is non-Catholic, most of them in the inner city. Finances are strained, however, and threaten our continued commitment to inner city children.

Another of the popular perceptions about Catholic schools is that this city somehow is unique in having such a large number of Catholic school students at the elementary and high school level.

Here again, the perception is at odds with the facts, since the Archdiocese of New Orleans ranks 11th among the dioceses in the nation with large Catholic school enrollments—behind Chicago, Philadelphia, New York, Brooklyn, Los Angeles, Newark, Detroit, Cleveland, Boston, and St. Louis.

The cities which have a substantial balance between public, Catholic and other nonpublic schools, we submit, are richer because of such pluralism in education.

The Catholic schools of New Orleans predate the Catholic schools of the other large cities mentioned. And it is perhaps because of the more than 250 years of the tradition of Catholic education in New Orleans that Catholic parents demonstrate a great desire to maintain their schools.

The myth that we are serving only the whites of this community is thus dispelled and we turn now to the false assumption that we are rich. In fact, the figures indicate that Catholic schools survive and provide quality education for a relatively few dollars.

Here are the figures for the current year, illustrating the expenditure per pupil for four of the large school systems, public and Catholic.

	Expenditure per student—	
	Public schools	Catholic schools
New York	$2,351	$350
Chicago	1,870	400
Philadelphia	1,859	400
New Orleans:	1,116	350
Elementary	1,116	350
Secondary		800

The fact is that we are not wealthy and, unless we can share in some way in the tax dollars being asked for by education, we cannot make ends meet.

It should be pointed out hat our total Archdiocesan school system saves taxpayers $69 million annually and that, we submit, is a major contribution to the education of children in this community.

We have in New Orleans on the one hand a public school system of 93,000 students and a parochial school system of 31,000 students operating within the city limits.

The public schools are supported by all taxpayers—those who pay city, state or federal taxes. The parochial schools are financed overwhelmingly by private dollars, paid by those citizens who also pay taxes for public education.

This latter group—as the financial squeeze continues—is the key group to which the city must appeal if educational quality for all children is to be improved. If quality education is synonymous with "more money," then we must convince this group ha pays for boh public and nonpublic education that they must put additional dollars into both systems.

And we must reach out to those who have no children in school at all and convince them that quality education is, indeed, tied to the number of dollars spent and that he city's economy—as well as their own future—is handcuffed to the quality of the city's total educational package.

We must—the leadership of this conference, the officials of the city, the Orleans Parish School Board and the Archdiocesan School Board—must resolve any controversies between public and Catholic schools.

We cannot duck the issue of tax aid for children in nonpublic schools for, when we have evaded that issue during the winter months, it has descended on us both in the hot months of the Louisiana Legislature.

We must work jointly on those areas of curriculum on which we can agree, recognizing that there will be differences of major proportions between the values which can be taught within our Catholic schools and the values which public schools can impart under the strictures of the various United States Supreme Court decisions. It is on this issue that we might reach our most sensitive points of difference, but there are broad areas of curriculum development on which we can agree if we are open with one another.

Speaking for Catholic schools, Archbishop Hannan has said that "education is one of the most important ways by which the Church fulfills its commitment to the dignity of the person."

And if we can—both in the public and private sectors—contribute to the development of the dignity of individuals and the pride that individuals have when they can achieve through learning, then we will accomplish the goal of this conference.

Our commonality is that we all dearly love this city. Why else would we be attending this important conference today?

We should not leave this conference in two groups—one dedicated to public education and one to nonpublic education. We should all leave with the resolve to be dedicated to the education of all children, no matter their race, religion, ethnic background, or financial status.

For this city will not endure without the educational pluralism, rich ethnic prides, and deep sense of history which has held us all together these many years.

STATEMENT OF RABBI MORRIS SHERER, PRESIDENT, AGUDATH ISRAEL OF AMERICA

Mr. Chairman and members of the committee:

My name is Rabbi Morris Sherer. I am the president of Agudath Israel of America, a 55-year-old national Orthodox Jewish movement, headed by the country's most eminent Jewish scholars. Our constituents throughout the United States include many thousands of parents whose children attend Jewish non-public schools. For the past seventeen years our organization has testified before congressional committees seeking justice for non-public parents. During these two decades, during which our cause made headway and suffered setbacks, we witnessed a growing understanding among the general American public of the justness of our claims.

We advocate passage of the Tuition Tax Credit Act of 1977 (S. 2142) initiated by Senator Packwood and Senator Moynihan. The sponsors of this bill are to be commended for devising a constitutional method of at least partially helping parents of children who have opted for non-public education.

In recent years, Americans of all faiths have sought means of helping non-public school parents cope with their financial dilemma, which arises from their paying tuition for their children simultaneously with paying taxes for children attending public schools.

During these years one popular myth has at long last been struck down: It has now become crystal clear that this is not a Catholic issue, nor for that matter a Jewish issue, nor a Lutheran issue. The public now senses in ever increasing numbers that it is an American issue, because at stake is the basic principle of freedom of choice in education. Reeling under the pressures of spiralling costs and skyrocketing tuitions, this freedom of choice has to many parents become a mythical illusion when faced by the realities of financial costs.

As we have often emphasized, pocketbook persuasion which propels a parent to the public schools against his will is no less an evil than constitutional coercion.

In the Jewish sector, according to recent figures released by the National Society for Hebrew Day Schools, 90,000 parents in 37 states send their children to 456 Jewish-sponsored non-public schools, of which 308 are elementary schools and 148 are high schools. The overwhelming majority of these parents are poor or middle class people, who often have to deny their families basic needs in order to meet tuition payments.

We favor the Packwood-Moynihan bill because it is designed to help people, instead of schools, and thus breaks the constitutional barrier which has obstructed certain other methods of assistance which have been considered. Moreover, this bill is federally designed and bears the weight of the judgment of the United States Congress, in contradistinction to previous state bills.

Above all, this bill is broadly based and covers all classes of our citizens involved in educating their children, and benefits parents of children attending public and non-public schools alike. This approach reflects other tax credits offered by our government to help people, and assures that there is no excessive entanglement between government and the religious schools, as the relationship is strictly limited to the parent and the government.

Tax credits are already provided today for such purposes as retirement income, foreign income taxes, work incentive programs and so on. If tax credits can be used to encourage business, why should not simple logic dictate that this method also be used to encourage Americans to exercise freedom of choice in education?

By extending this range of benefits to non-public school parents, Congress would be righting a wrong and letting the word out that diversity in education is not merely a slogan but a real possibility for any American who seeks this approach. In the name of justice, we urge this honorable committee to give favorable consideration to the Packwood-Moynihan Tuition Tax Credit Act.

Senator **Packwood**. Next we will take Grace Baisinger, speaking on behalf of the PTA.

STATEMENT OF GRACE BAISINGER, PRESIDENT, NATIONAL PARENT TEACHERS ASSOCIATION

Mrs. **Baisinger**. Thank you.

It has been a long afternoon. We are last among the witnesses but hopefully not least.

I have with me Dr. David Stratman, who is governmental relations director for the National PTA.

I am Grace Baisinger, president of the National Congress of Parents and Teachers. I am pleased at the opportunity to comment upon this important legislation. The Tuition Tax Credit Act being considered here, if enacted, is certain to have far-reaching effects on education in in this country. It requires your most careful scrutiny.

The public education system is central to American democracy. The schools have been looked to by generations of Americans as the means to improve the quality of their and their children's lives. The major Federal effort in education has been to equalize the opportunity for a quality education and to remove as far as possible the financial circumstances of a student's family as a barrier to a college education. We believe, however, that tuition tax credits will have significant adverse effects on public education, and will in fact make a college education less available to students from low- and middle-income families.

The Joint Committee on Taxation estimates that the proposed legislation will result in a 1980 calendar year revenue loss to the Treasury of

$4.7 billion. This figure, while it represents less than 4 percent of what the Nation's taxpayers currently spend every year for public education at the local, State, and Federal levels, amounts to nearly 50 percent of the Federal education budget. It is against the Federal budget that these funds in support of private education would be charged. The plan would cut deeply into funds available to the public schools. Educational services to public school children would inevitably be affected.

In addition to this direct financial threat to public education which tax credits pose, they present another, in the long run perhaps more significant, problem. Taxpayer support for tuition payments to nonpublic schools would likely result in a weakening of political and financial support for the public schools at the local level. Public school revenues depend primarily on local property taxes. If a significant part of the population is being subsidized to send its children to private schools, the task of creating meaningful support for public system will be increasingly difficult. Given the critical financial situation of the public schools, especially in urban areas, to weaken them further could have extremely serious effects.

A number of arguments which have been advanced in support of tuition tax credit legislation require comment:

The argument is made that parents who send their children to private elementary and secondary schools are faced with a double burden. That is, not only must they pay tuition, but they are required to pay rising property taxes—taxes which are used to finance the public school system. But the schools which children attend express the free choice which parents of private school children have made within the constraints of cost. Parents who send their children to private schools have a double burden only because they have chosen not to send their children to the public educational system which is provided free for all.

Tuition tax credits, it is argued, will provide to all parents a free choice of a private or a public education. Tuition tax credits, however, subsidize a choice for the private system at the expense of the public schools. Public school parents are making a choice themselves. If public education would have significantly less financial support—as it would if a tuition tax credit bill were passed—the viability of public education as a choice would be diminished. The effect in the long run of tax credit legislation could be to force children out of the public schools because of declining quality.

It is true that taxpayers are saved the expense of educating children in private schools; it does not follow, however, that the public should support these schools. The cost to taxpayers of maintaining the parochial school systems and other private schools as well as maintaining the public educational system would be far more expensive than the present system. Thus discussion of how much money is saved by taxpayers is misleading. It would be far more expensive for the public to support the nonpublic schools as well as the public system.

A major argument offered in support of the tuition tax credit plan is that it will enable the middle-income family to deal with escalating tuition costs for higher education. The middle-income family is indeed being squeezed as never before by rising costs. The average cost of college tuition alone in 1977 was $3.300.

In addressing the need for this legislation the sponsors point to the fact that over the past 5 years the average tuition and fees of private 4-year institutions rose by 54 percent and public 4-year institutions by 55 percent, of private 2-year institutions by 52 percent and of public 2-year institutions by 130 percent. According to data supplied by the American Association of State Colleges and Universities, the result of these soaring education costs is a 20-percent drop in the number of lower- and middle-income students participating in higher education. But these data are in fact arguments against tuition tax credits. The relief which the bill offers middle-income families is more illusory than real; at the same time it will undermine the array of Federal financial assistance programs presently available to students from low- and middle-income families. The assortment of Federal grants and loans to students is based on a scale of economic need, and takes into account a variety of family circumstances. While these programs offer a great deal more aid to students than do tax credits, they have never been funded at levels which would make full benefits available to all eligible students. The net effect of the Packwood-Moynihan bill could well be to make college education less available to a broad spectrum of middle-income families.

Tax credits would be considered by institutional and State financial aid officers as family discretionary income. Their benefits would therefore be canceled for any family otherwise eligible for any other form of financial assistance.

Tax credits would almost certainly result in higher tuition. The tax loss stemming from the bill will affect the amount of Federal aid available to all postsecondary institutions. Higher education authorities have suggested that tax credits will put considerable pressure on colleges and universities to raise tuition. Thus the small benefit that the tax credit provides to the families of students would be erased.

A $500-tax credit is only a small part of average college costs, and will not be of much help to a family in real need. Tax credits do not increase with rising costs. They are no defense against yearly advances in costs for families with limited resources. They also are not adjustable to the costs of attending different institutions, and would make it difficult for a student to choose a more expensive private institution over a public one.

Federal assistance programs are only one of the major funding sources available to students of postsecondary education. There are two other major sources—State grants, some of which are also federally supported through State student incentive grants—and institutional assistance to students. Institutional and State assistance tend more than Federal assistance to go to students from middle- and upper-income families. In other words, while Federal assistance is available to students from a variety of economic backgrounds, it is the major source of aid to low- and middle-income students. To skew this aid away from these students would mark a radical departure from Federal policy and could present many families with insurmountable obstacles to the dream of a college education for their young. If a portion of the huge expenditures that S. 2142 would entail were added to the present Federal assistance programs, the middle-income families now in such difficult straits would be truly helped.

Mr. Chairman, we urge you to consider these arguments in opposition to S. 2141 in your deliberations.

Thank you.

Senator **Packwood**. From the day that Senator Moynihan and I introduced this bill we have had a clipping service clipping educational stories and stories from around the country, comments on it, and a fair number have come from college newspapers. I cannot guarantee that our clipping service has indeed found everything, but to date every single college editorial has editorialized in favor of this bill, and more than one-half made reference to this as much preferential to the mixed up bureaucracy of the basic opportunity grants.

I wonder if you would comment on what appears to be student opinions, at least to deal with that?

Mrs. **Baisinger**. I am going to ask Dr. Stratman to comment.

Mr. **Stratman**. Thank you.

Well, not having a clipping service, let me just make one point about that. On May 12 of last spring when there were hearings on Senator Roth's bill and I believe a range of similar legislation, two student groups testified, the National Student Lobby and the Coalition of Private University Students—both of them expressed fairly strong opposition to the concept of tuition tax credits as a way of funding college tuition.

Senator **Packwood**. I understand that. I read their testimony. I am curious why all of these student editorials would come out in favor of it.

Dr. **Stratman**. Well, I couldn't speak to that, Senator. I think that what one could speak to is the kind of arguments that were raised in that testimony. This was speaking at the time about Senator Roth's bill, but the students argued that a great many college students support themselves with part time work and they would not be beneficiaries of aid under Senator Roth's bill.

Another strong argument that they raised, I believe, was that the range of Federal assistance available from this mixed array is usually quite a bit larger than the $250 tax credit or $500 credit envisioned by S. 2142.

For instance, the BEOG, basic education grants in 1976–77 averaged $860 in amount; guaranteed student loans averaged $1,380. SEOG grants, supplemental education opportunity grants, averaged about $550.

There was, in other words, a great deal of flexibility adjustable to need; I think that is what they were speaking to, and I think those are real arguments.

Senator **Packwood**. Mrs. Baisinger, you have heard the testimony today from Mr. Solomon and from a number of others about the not only disparate cost between public and private education but apparent disparate results in the growing disappointment among any minorities and poor with public education. One, are their facts right, and two, what is wrong?

Mrs. **Baisinger**. I was sitting here hoping one of you would ask some questions about some of the facts presented.

A recent Gallop Poll showed parents with children in public schools did find they were pretty good.

Senator PACKWOOD. In that case, they would leave their children in public schools even though this bill passes?

Mrs. BAISINGER. Beg pardon?

Senator PACKWOOD. They would leave their children in public schools even if this bill passed?

Mrs. BAISINGER. Not necessarily.

Senator PACKWOOD. Even if they liked the schools?

Mrs. BAISINGER. I am afraid one of the deleterious effects of this bill might be to reinstitute some of the academies which we have found finally come to an end in some parts of this country, and I am now talking specifically about academies in response to the desegregation legislation.

Senator PACKWOOD. They are not eligible for any kind of credits under this bill.

Mrs. BAISINGER. They could very well because some of them did manage to get nonprofit status and tax-exempt status, but whether they would do any true recruiting of the kinds of children that you are suggesting might be attending private schools—the poor, the minority—I would really question that. This is of great concern to our organization.

Senator PACKWOOD. Do you question the statistics put forth in terms of ethnic and minority make up of private schools in the country generally and the per capita income of the parents generally?

Mrs. BAISINGER. That was not the question you asked me. Let me finish on some of the other statistics.

I mentioned the Gallup Poll according to which parents did give more support to the public schools than people who had no children in the public schools. I would say that I think our public schools today have been terribly maligned. True, scores have dropped, they have dropped maybe 10 percentage points in 10 years, but nobody has done an adequate study as to why they have dropped.

I had hoped as I sat here listening this morning one would have asked some questions about cost effectiveness.

You are not suggesting, are you, that we lower teacher salaries, because one of the reasons that our private schools are able to operate "cost effectively" is that they pay their teachers so much less, substantially less, than the teachers in public schools are paid. I would hope that we are not going to achieve cost effectiveness by——

Senator PACKWOOD. Plus apparently having indirectly fewer administrators.

Mrs. BAISINGER. Possibly not offering as many programs, because I would have hoped you would have asked for a definition of what an administrator is—if you are talking about reading specialists and specialists for handicapped children, or specialists who run crisis center classrooms.

You know the public schools do have to take all children and we have found that many children who are disciplinary problems or other kinds of problems in our private sector are sent back to the public schools. This may very well account for some of these specialists that were referred to very blithely as administrators.

Senator PACKWOOD. I am curious when I hear Mr. Solomon's testimony about the school that CORE is running. He regards the New York public school system as an abysmal failure. The blacks are educable, they are not dumb, they can learn and are learning, and he simply says New York public school system isn't working. I don't know the New York public school system.

What is the answer to what he says?

Mrs. Baisinger. Did you ask him for some statistics on the children and how well they are doing, how well they are doing academically. Who is supporting that school? Frankly, I don't know anything about the school so I would hesitate to comment, but I do think that it is up to this committee to elicit that kind of information.

Senator Packwood. Pat?

Senator Moynihan. Thank you, Mr. Chairman and, Mrs. Baisinger, I very much appreciated your comments and am interested in them, and let me in the friendliest way respond for a moment. I hope you will take this in the spirit in which I say it.

The first thing I would hope you would be clear about is that Senator Packwood, and if you don't mind, I will include myself, we are neither of us persons who come new to the question of support for education. In both of our cases the initial thrust of our involvement was on behalf of public education, and our support for it has been so consistent as to suggest a certain lack of intellect. Nothing can be that good that much always, but at least we have been consistent.

I would, without asking for either credit or blame, say there wouldn't be an Elementary or Secondary Education Act if it hadn't been for some of the things I was involved in in 1964. The basic educational opportunities grant program is also something which I was much involved with bringing about. The existence of the National Institute of Education is something from the executive branch I was involved with.

This has not been new. It is about 5 years in both cases. During this period something important has happened. When Senator Packwood and I first encountered these matters, one could make a case that the public education system of this country was inadequately supported. But in the last 15 years we have not merely increased, I think we have quadrupled the level of support, we have doubled the proportion of GNP. There has been a huge success. The proportion of gross national product going to elementary and secondary education has doubled.

In the process, however, we end up developing an imbalance. We find ourselves threatened with the loss of much pluralism and diversity from our system. I love the PTA. There are no better people in America. But, really, need you always come in and suggest that popular support for the public school system is directly correlated with the degree to which it attains monopoly, and that to the degree that there are alternatives available support will diminish.

Now, Mrs. Baisinger, that is not so. If there is a correlation in these statistics I don't want to claim to know the literature at this moment, but, in my dark past I was a professor of education—it is the higher the proportion of students in parochial schools in an area the higher will be the level of expenditure on public schools.

Mrs. Baisinger. There are studies to that effect?

Senator Moynihan. I believe so.

Mrs. Baisinger. May you repeat the statement again so it would really make an impression on me, because I might want to comment.

Senator **Moynihan**. It has already made an impression on me that you don't already know it. The higher the proportion of school-aged children in parochial schools the higher the level of support for the public schools. Or so I would submit as an equally plausible hypothesis.

Mrs. **Baisinger**. I have not heard that correlation and I wonder if that is true, if you look at some of the suburban schools which, as it has been testified to today do provide some of the alternatives for parents that supposedly we cannot get unless we get them through private sector urban schools. I do not know that in some of the fine schools in some parts, of the country in the West, and in the Midwest, that there has been a large expenditure on any kind of private schools. This comes as a very surprising statistic to me.

Senator **Moynihan**. Well, let me be a good sport.

Mrs. **Baisinger**. Give me the source

Senator **Moynihan**. I suggest that you will be more than welcome back with contrary data. I don't insist on data. I am thinking of what I read 15 years ago and knew 15 years ago.

Mrs. **Baisinger**. Dr. Stratman would like to add——

Mr. **Stratman**. If I may, I am unfamiliar with this statistic, though it may be quite true. I am sure it is true if you are citing it. But I think that the legislation contemplated now would change the situation in which this statistic has been true; that is to say, never previously, to my knowledge, has there been a Federal tax subsidy to attend a private school. With that changed situation, I think—with that kind of change—political support at the local level, we are suggesting, may well diminish——

Senator **Moynihan**. That is a perfectly valid response. I am just saying that this is not the first time one has heard from public educators that they have to have a monopoly or they won't have any support, which to me does not speak well of public education.

Let me give you the expenditures from gross national product for education.

When would you say you entered public life, sir?

Senator **Packwood**. 1962.

Senator **Moynihan**. That is a little bit late, but not bad. In 1962, we had expenditures—1961 is the data we have—total expenditures on education of $29 billion. Last year it was $120 billion. Let me give you the experience of our generation. We all got out of the Navy around 1946–47, as the baby boom was just beginning. Expenditure on education as a proportion of GNP was 2.8 percent, and a generation later it is 7.9.

Now, I happen to have here a caculator which enables me to tell you exactly what that is. No, I will have to do it again. Excuse me—we divide, as a matter of fact.

Mrs. **Baisinger**. We went to school before they taught us calculators.

Senator **Moynihan**. It is a 282 percent increase in the proportion of GNP. It has nearly trebled.

Mr. **Stratman**. I can only ask then, Senator, if the purpose of the bill is to reduce the proportionate share of the GNP which will go to education?

Senator **Moynihan**. No; to the contrary. It may be that it will increase it by the process that Dr. West suggested, that persons will go to college who would not otherwise go. But the point I do want to make is that we would hope for a little generosity of spirit from the public schools here and from people who care about the public schools. We care about them and we look after them first.

There is no question, Mr. Chairman, that we looked after them first. We have trebled the proportion of gross national product. We have increased the expenditures about 20 times. And now at length, at long last, we come to this matter. Lift up your hearts, PTA, know that the public schools have innate attraction and need not fear competition. It may be the more competition you have, the more you will be valued for your obvious virtues.

Mrs. **Baisinger.** I wish I could be as confident as you are about that. That is not the case.

Senator **Moynihan.** I detect a lack of inner confidence.

Mrs. **Baisinger.** In your statements, absolutely.

In terms of the gross national product, I think to truly understand that figure you have to look at the number of children and the number of school districts and schools we have. We had back in 1946 or 1944 a number of schoolchildren much less than we are trying to educate today and the number of schools that we are trying to service.

Senator **Moynihan.** As a portion of GNP, that would not be the relevant comparison.

Mrs. **Baisinger.** There might be some relationship. If you then look at what we have asked our public schools to do, through certain legislation, legislation that we have supported and the benefits of which have accrued to many of our nonpublic schools, because they were benefits that helped children, and so PTA has been generous and will always be generous.

I might also say in the PTA we do have the broadest spectrum of grassroots representation that any organization in this country has, of every religion, of every economic group, of every minority group; and the position that I have set forth today is not one that was arrived at by the leadership since the bill was introduced. It has been with the organization probably since its beginning and reaffirmed periodically as recently as 1976. In 1966, it was reaffirmed by the vote of our State congresses, and we do have branches in the 50 States, plus the District of Columbia and European Congress of American Parent Teachers and Students.

So, it is a well-considered position that we take. It is not a grudging position against private schools; it is just a position that we believe public moneys should be going to public education.

Senator **Moynihan.** Thank you, ma'am. Thank you, Mr. Chairman.

Senator **Packwood.** No other questions? Thank you.

The hearing is adjourned until 9:30 tomorrow morning.

[Whereupon, at 4:15 p.m., the subcommittee was recessed, to reconvene on Thursday, January 19, 1978, at 9:30 a.m.]

TUITION TAX RELIEF BILLS

THURSDAY, JANUARY 19, 1978

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met at 9:30 a.m., pursuant to recess, in room 2221, Dirksen Senate Office Building, Hon. Bob Packwood (chairman of the subcommittee) presiding.

Present: Senators Packwood, Moynihan, Ribicoff, and Roth, Jr.

Senator PACKWOOD. The hearings will please come to order.

As I indicated yesterday, we had many witnesses, hearings went until about 4 to 4:30 in the afternoon. We are prepared, if necessary, to go again that long or into the evening short of overlapping with the state of the Union message tonight. But I would ask the witnesses to hold their statements individually, where they are appearing alone, to 10 minutes, and leave ample time for questions.

I can assure you you will get a chance to say everything you need to say. All of your statements will be in the record, but if we allow all the witnesses to go as long as they would all like, I don't think we would finish the hearings this spring.

Our first witness is Mr. Donald Lubick, Acting Assistant Secretary for Tax Policy of the Treasury Department.

STATEMENT OF DONALD LUBICK, ACTING ASSISTANT SECRETARY FOR TAX POLICY, ACCOMPANIED BY EMIL SUNLEY, DEPUTY ASSISTANT SECRETARY FOR TAX POLICY; AND EUGENE STEUERLE, OFFICE OF TAX ANALYSIS, ALL OF THE DEPARTMENT OF THE TREASURY

Mr. LUBICK. Mr. Chairman, I am pleased to appear here today to present the Treasury's views on bills that would provide relief in the form of tax credits for the expenses of education. With me is Emil Sunley, Deputy Assistant Secretary of the Treasury for Tax Policy, and Eugene Steuerle, of the Office of Tax Analysis, both of whom have labored extensively in this area.

Before proceeding to analyze the various proposals for credits for educational expenses, we would like to make a formal request on behalf of the administration: that the various proposals for tax relief for education expenses be considered by the Congress along with basic educational assistance programs. Only in this manner can the Federal Government's programs and expenditures in assisting students be considered in a unified and comprehensive way.

The administration is formulating educational proposals that include an increase in the funds available to assist students attending institutions of postsecondary education. These proposals would provide assistance to families at higher income levels than is currently the case.

Senator **Packwood**. Is the administration formulating policies that would give some kind of assistance at the primary and secondary level, public and private?

Mr. **Lubick**. It is my understanding that the administration is giving some consideration to that. I will have to defer to HEW for any further information, but I believe Secretary Califano is investigating that.

Senator **Packwood**. I see Mr. Warden is scheduled to testify next and I will then ask him what the plans are, especially for private primary and secondary education.

Mr. **Lubick**. Only if tuition tax credits are considered along with other educational grant programs can we rationally allocate dollars spent for education in a comprehensive and integrated manner. Thus, a proper consideration of our views requires a necessary evaluation of available alternatives.

I will first discuss bills such as S. 311, which would provide a tax credit for the cost of tuition for higher education. Then I will discuss such bills as S. 2142, which would extend such a credit to tuition paid to elementary and secondary schools. Finally, I will comment on proposals related to education assistance programs provided for workers by employers.

College tuition tax credits:

The Treasury Department supports the use of Federal moneys for assisting students in meeting the costs of postsecondary education. However, the Department maintains its opposition to a tax credit because a credit is an improperly targeted and inefficient method of providing such assistance. We note that we are joined in this opposition by such groups as the National Education Association, Parent Teachers Association, and the AFL-CIO. The specific reasons for our opposition, are compelling:

One. Contrary to popular belief—a belief that lies at the heart of the support for the measures—increases in student charges in recent years have not outpaced the rate of growth of family income;

Two. Relief in the form of a credit would operate to the disadvantage of private institutions of higher education;

Three. The benefits of the credit would go largely to families with incomes well above the median family income, thus having an adverse distribution effect;

Four. A credit is not an efficient means of encouraging investment in higher education;

Five. A credit would make current educational policy—already a maze—even more complex;

Six. A credit would increase the costs of higher education.

Revenue cost: Most bills that provide for tuition tax credits will involve substantial losses of revenue. For example, table 1 shows that the revenue cost of a nonrefundable tuition tax credit of $250 would be in the neighborhood of $1.2 billion. A similar credit of $500 would cost $2.2 billion a year at 1978 levels of income and would grow over time. Refundability would add approximately $11 million and $150 million, respectively to these costs. Once a credit of this size is adopted, one can expect continuing efforts to increase it. Such a program could easily become an even larger drain on Federal revenues. Again, if moneys are to be spent in the area of higher education they can be better targeted and more efficiently spent.

Family income and student charges: The underlying basis for the belief that tax relief for the expenses of higher education is necessary is that expenses for education now take a larger share of family income than in the past. The data available to us indicate that this is not the case. During the period of 1967–76 median family income has risen at a rate comparable to the rate of increase in gross student charges at institutions of higher education (see table 2).

Per capita disposable personal income—or, average after-tax income of individuals—has risen even faster than gross student charges. Moreover, the rate of growth in student charges has recently declined. Combining the increase in family income with the increase in appropriations for student aid programs, a congressional Budget Office study [1] concluded that during the past 9 years, the charges faced by students from low and moderate income families, net of Federal assistance, have dropped as a percentage of family income; while, for middle income families, the ratio of charges net of Federal assistance to family income has remained about the same.

[Tables 1 and 2 follow:]

TABLE 1.—MAXIMUM $250 TAX CREDIT FOR TUITION FOR HIGHER EDUCATION FULL TIME UNDERGRADUATES ONLY (INCLUDING VOCATIONAL) CALENDAR YEAR 1978 LIABILITY—FOR FULL YEAR

Adjusted gross income class (thousands)	Number of tax credits allowed		Revenue loss (millions)	
	Refundable	Nonrefundable	Refundable	Nonrefundable
0 to $5	750	150	$60	$12
$5 to $10	963	642	141	94
$10 to $15	1,288	1,258	215	210
$15 to $20	1,069	1,069	223	223
$20 to $25	800	800	174	174
$25 to $30	655	655	152	152
$30 to $35	323	323	78	78
$35 to $50	599	599	144	144
$50 to $100	274	274	69	69
$100 and cover	45	45	12	12
Total	6,766	5,815	1,268	1,168

Source: Office of the Secretary of the Treasury, Office of Tax Analysis.

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[1] Congressional Budget Office, "Post-secondary Education: The Current Federal Role and Alternative Approaches" (February 1977).

TABLE 2.—INCOME AND STUDENT CHARGES, 1967-76

	Median family income [1]			Per capita disposable personal income	Total student charges (school year ending spring of year indicated)	
	All families	With 18 to 24 yr dependents	With 18 to 24 yr dependents in college		Public	Private
Year	(1)	(2)	(3)	(4)	(5)	(6)
1967	$7,933	$9,228	$11,433	$2,740	$1,026	$2,124
1968	8,632	10,169	12,550	2,930	1,064	2,204
1969	9,433	11,076	13,712	3,111	1,117	2,321
1970	9,867	11,485	14,396	3,348	1,205	2,533
1971	10,285	11,960	15,079	3,588	1,288	2,740
1972	11,116	13,062	16,048	3,837	1,357	2,917
1973	12,051	13,956	17,220	4,285	1,530	3,035
1974	12,836	14,624	18,634	4,639	1,566	3,163
1975	13,719	15,739	20,014	5,062	1,710	3,744
1976	14,547	[2] 16,897	[2] 21,918	[2] 5,494	1,882	3,981
Percent change, 1967-76	+83.4	+83.1	+91.7	+100.5	+83.4	+87.4
Estimated percent change, 1976-78 [3]				+18.0 to +22.	+11.9	+11.8

[1] Family incomes for all families are those reported in the Bureau of the Census March current population surveys. Family incomes for families with 18-to-24-yr-old dependents are those reported in the October current population surveys but projected to March levels of income for all families. The Bureau of the Census reports that for the above period October median family income ranged from 82 to 86 percent of the median family incomes reported in March.

[2] Estimated.

[3] College Scholarship Service estimates for changes at 4-yr resident colleges.

Note: A census family is 2 or more persons related by blood, marriage, or adoption, and residing together. All such persons are considered members of the same family. Cols. (2) and (3) are incomes of primary families. A primary family includes a head of the household, the wife, or married. Only those in which the 18-to-24-yr-old dependent is attending college full time are included in col. (3).

Source: "Survey of Current Business" and Congressional Budget Office, "Postsecondary Education: The Current Federal Role and Alternative Approaches (February 1977)" Bureau of the Census current population reports. National Center for Education Statistics.

Mr. LUBICK. The Federal Government has substantially increased its investment in higher education over the last few years and, doubtless, will increase that investment over the coming years. However, that increased investment should be responsive to the greatest needs of our educational system, and not to an illusory need that focuses solely on price increases and does not take into account corresponding increases in income.

Private Education. We are also concerned about the competitive effect of relief through a tuition tax credit on private educational institutions. Let me illustrate the problem using 1976 student charges. A tuition tax credit of $250 would reduce a family's total student charges for attendance at a private postsecondary school from $3,981 to $3,731 or by about 6 percent. However, it would reduce the total student charges of attending an average public school from $1,882 to $1,632 or by 13 percent. For the student living at home and attending a public institution, the percentage reduction in cost would be even greater. Thus, on the average, the cost of attending a private postsecondary school would increase relative to the cost of attending a public school and would increase even more relative to the cost of public school where the student lived at home.

Senator PACKWOOD. Let me ask you a quick question. If that is the situation, why do the private colleges support this concept so strongly?

Mr. LUBICK. Senator Packwood, it is my understanding that there is a mixed bag here. I think a number of the private institutions are at least in favor of other support to education. The tuition tax credit, I believe, is not their preference.

For example, the board of directors of the National Association of Independent Colleges and Universities stated at its December meeting that a student aid approach is a higher priority than that embodied by a tuition tax credit. It is my understanding that, generally, support from the independent colleges and universities has been somewhat lukewarm.

Senator PACKWOOD. That has not been at least the letters they have sent or at least the evidence they will present here.

Let me ask you a second question. If the statement you have is correct, this indeed is going to favor public education, they should at least lay to rest the argument this is a bill essentially designed to aid private education at the expense of public education.

Mr. LUBICK. At the post-secondary level, I think that argument can be considered laid to rest as far as we are concerned.

Senator PACKWOOD. Thank you.

Senator MOYNIHAN. May I ask a question?

Good morning, sir, and I thank you sincerely for coming here in the spirit of giving us information and good arguments. I am not persuaded by your last passage in which reducing a fixed sum from disparate sums produces different percentages and suggests to you that a 6-percent reduction in one case is of lesser consequence than a 13-percent reduction in the other case. As you are an economist and you come from the Treasury, I invite your attention to the theory of marginality in pricing.

An economist ought to know what is the marginal effect of the exercise of the option on the market.

Mr. LUBICK. Senator, I must disclaim any expertise as an economist.

Senator MOYNIHAN. You are not an economist?

Mr. LUBICK. I happen, however, to have associated myself with two expert economists, Mr. Steuerle and Mr. Sunley. Emil, why don't you supply to the Senator——

Senator MOYNIHAN. I put it to you, the issue is the marginal effect.

Mr. SUNLEY. Let me respond to that, if I may, Senator Moynihan.

Let us first assume that a private education would cost about $4,000 and a public education would cost about $2,000 a year——

Senator MOYNIHAN. Right.

Mr. SUNLEY. Now, at the moment the cost of a public education is half that of a private.

Senator MOYNIHAN. Right.

Mr. SUNLEY. If you reduce both of those by the full $250 credit, then the cost of the public education relative to the private becomes less than half. That is, assuming that the colleges and universities do not raise tuition and capture the credit for themselves. If they do so, then not only does the absolute difference remain $2,000, but the relative difference in prices remains the same.

Now, it is our understanding—and I think the understanding of many who have looked at the tuition tax credit—that $250 is not going to have a major effect on whether a student attends college or not.

Senator MOYNIHAN. Could I just ask you——

Mr. SUNLEY. But it will change the relative prices between public and private institutions and may, therefore, affect the choice of a public education relative to a private education.

Senator MOYNIHAN. We spent much time yesterday asking whether there was any empirical data to support an extraordinary assertion of the Chief Justice in the *Tilton* decision, and got none.

Let me ask you, is there anything in the literature on price preferences in the choice of higher education?

Mr. SUNLEY. It is my understanding, over a year ago we reviewed some of that literature, that it is considerably sparse and mixed in terms of what one might conclude.

Senator MOYNIHAN. A lawyer is passing you a note. You are the economist. Is he saying he advises you not to answer that question?

Mr. SUNLEY. I believe the note was being passed from somewhere else, Mr. Moynihan.

Could you repeat your question?

Senator MOYNIHAN. Is there anything determinative or even indicative in the literature on price as an element of choice in higher education?

Mr. SUNLEY. Yes; there is some evidence that price has a small effect.

Senator MOYNIHAN. Some?

Mr. SUNLEY. Some small effect. But remember, that what we have been concluding, that we are reducing the marginal price of a public school more than we are reducing the marginal price of a private school——

Senator MOYNIHAN. Right. That is the note you were passed.

Mr. SUNLEY. In percentage terms. And that, therefore, if you were going to expect an effect from a price effect here, that you would anticipate that the credit would tend to shift students from the private schools to the public schools.

Senator MOYNIHAN. Well, I think I would make the opposite argument. What little I know from the literature, and there is not much, has to do with the fact that price is a surprisingly weak determinant of choice. It shouldn't be, it ought to be like buying an automobile. It isn't. And consequently you could make a case, at least economists I know could make one, that affecting marginal cost in the higher ranges will have more consequences than affecting the marginal cost in the lower range.

It is a technical argument, but I just want to raise it and invite you to come back if you think there is anything in the literature.

We would be much appreciative of the Government's witnesses, particularly, if they come before this committee with data.

Mr. SUNLEY. If you believe, Senator, that price has a very weak effect, we might wonder why there is such enthusiasm for this credit.

Senator MOYNIHAN. Because it seems to me that the marginal consequence, the marginal effect is stronger in consequence of the general weak one and that the preferences that we are trying to facilitate will in fact be very responsive to this much change in price. It is an argument.

Senator PACKWOOD. I might say, Mr. Secretary, I started this off by interrupting your statement, but I would still like to hold you reasonably to the admonition if you read the rest of this statement you are going to be on until 20 after 10 reading it.

Mr. LUBICK. I will try to summarize the points, Senator Packwood, if that would be helpful.

Senator PACKWOOD. I would appreciate it.

Mr. LUBICK. The next issue is the distributional effect of the tax credit. It appears to us that the program is not targeted on a basis of ability to pay or on a basis of expenses of the particular educational institution in question. Both types of targeting, we think, are good. The across-the-board credit is inferior. When you look at the recipients of the tax credit, our tables indicate that they tend to be wealthier than average families. In a sense, the tuition tax credit would provide relief to upper middle income taxpayers, to meet a temporary liquidity problem associated with the transfer of wealth to children through the payment of educational expenses.

The next point that we have concerns investment in higher education. Arguments have been made that that a tuition tax credit would permit more individuals to obtain a college education. To achieve that result, we think it is much more important that Government assistance be channeled to assist those on the margin of deciding whether to attend college or not, and that requires targeting assistance to the poor and lower-middle income families less than those in higher income brackets.

We have referred next to the question of complexity. Involving the Internal Revenue Service in the administration of education policy along with HEW and other agencies, adds complexities. It would require the Service to monitor of educational institutions and credits in a way that is perhaps unnecessary.

Mr. Sunley has also referred very briefly to the effect of the credit on student charges. It appears that a large amount of or certainly some amount of any tuition tax credit would result in higher student charges, so that some of the subsidy would ultimately go to the colleges and universities and to that extent we point out that the financial relief to individuals—sometimes stated as the basis for the allowance of the credit—would thereby not be achieved.

Let me turn briefly to the question of elementary and secondary education, which Senator Moynihan's bill and Senator Packwood's bill also deals with.

Extending a tuition tax credit for tuition charges paid by families for the cost of elementary and secondary education, raises a number of different problems from those bearing on the tuition credit for higher education. Again, the Treasury is opposed to extending the tax credit to tuition costs of primary and secondary education.

First, this would be a substantially more expensive type of credit. The revenue cost under S. 2142 would be $4.7 billion at the 1980 level of income and would probably increase. As with the tuition tax credit for higher education, schools could be expected to increase their tuition charges in order to share in the benefits of the credit, and the number of students attending private elementary and secondary schools could also be expected to increase.

Now, I think the most important consideration in connection with the general extension of the tuition tax credit to private schools is the question of percussions public schools. Traditionally, this has been an area primarily in the control of State and local governments. A broad general tuition tax credit for private primary and secondary education would have rather radical effects on public schools education in this country. To a great extent, it would mean a subsidization by the Federal Government of private church-related education and perhaps to a lesser extent, of secular public schools. We list in our statement a number of the possible ramifications on public education.

We at the Treasury, of course, are not experts on the effect on the public educational system. We would defer to the witnesses from the Department of Health, Education, and Welfare on that question. However, I think it is fairly clear that this will have a substantial effect upon the system of public education as it has existed in the country, and, indeed, I read with great interest Senator Moynihan's statement in the Congressional Record last September. As usual, his statement was very scholarly and illuminating, and I think it indicated that the credit was probably intended to have that effect. I think that is an important question of educational policy which has to be debated by the Congress.

Senator HANSEN. If I could interrupt, Mr. Chairman, let me ask the Secretary to identify the sort of strains that are implied on page 9. You say:

> First, an increase in private school attendance would correspond to a decline in the number of students attending public schools. A number of public school systems recently have undergone dramatic change because of declines in the birth rate and further decline would place further strains on those systems.

What are the further strains you have in mind?

Mr. LUBICK. Well, many of these systems have large fixed costs. As attendance and enrollment declines, the ability to provide the quality of education which they have been providing may decline with it.

Senator HANSEN. Is it your feeling, generally, that there are more than adequate classrooms for the number of students in public schools?

Mr. LUBICK. My personal experience in a couple of communities is that we are faced with very empty classrooms.

I have just moved down here. I know that Montgomery County is closing schools and reducing course offerings.

Senator HANSEN. Is that true nationally?

Mr. LUBICK. Again, I think that question would better be asked to the HEW witnesses because we don't have the data. I hesitate to give personal experiences on this. I have certainly seen it in Buffalo and New York, as well as down here.

Senator HANSEN. Well, I just wasn't aware that it was true nationally. Maybe it is. But I know it is not true in Wyoming. I would agree that we don't have conditions that are identical to those back here.

Mr. LUBICK. It is my understanding that, generally speaking, the era of great need for new appropriations for school buildings is one that has passed.

Do you agree with that, Emil?

Mr. SUNLEY. Senator Hansen, all I would add is there is considerable variation in experience across the country. There are clearly areas which are rapidly growing. Some of these are suburban areas located adjacent to central cities. Others are States such as your State, which is rapidly growing. These school systems may in fact be building additional schools, but there are many school districts where there is a decline in the number of school-age children, even though the area may not be losing total population. These areas are finding themselves with an excess of school rooms. Capital costs must be spread over fewer and fewer students, and that does have an adverse impact on the public school system. We fear these problems would be aggregated if, as a result of credit, 10 or 15 percent of public school students moved over to private primary and secondary education.

Senator **Hansen**. Well, I would have to, first of all, challenge the supposition that that much of a change would occur and, second, I should think the kind of strains that have characterized school board headaches in the past would be one of the easier ones to bear myself.

Mr. **Lubick**. I think the parent-teacher associations and the school board associations have expressed great concern with this particular problem, and I think it is quite a common problem. If it is not a universal problem certainly there are——

Senator **Hansen**. Maybe for the record we might get either from you or from HEW some figure on overall national enrollment.

Mr. **Lubick**. We will see what we can provide on that.

Senator **Hansen**. Thank you, Mr. Chairman.

Mr. **Lubick**. Let me address finally the question of employer-provided education assistance. It is my understanding that tomorrow the subcommittee is going to hold hearings on legislative proposals regarding education assistance programs provided for workers by employers and that we have been requested to comment briefly on the subject.

We don't have a specific proposal that we are commenting on, but, under certain proposals, we understand that education assistance received by employees would not be regarded as taxable income to employees. The Treasury opposes a general statutory exclusion from income for employer-provided assistance.

Senator **Packwood**. Why?

Mr. **Lubick**. Again, Senator Packwood, we believe that, if compensation is received in kind, it ought to be taxed, in particular if a person who does not receive a particular benefit in kind but has to spend for it out of his own pocket, cannot deduct it. It seems to us that such a proposal causes great complication in the tax laws. It leads to——

Senator **Packwood**. Complications in the tax laws.

If an employer and employee without any help or threat from the Federal Government decides that for the employee to better himself or herself the employer will pick up the cost of going off to a nighttime class at a community college, and the law says the cost of that tuition is simply not counted as taxable income of the employee, that adds complexity to the tax code?

Mr. **Lubick**. Certainly, because it means that you have to have tax lawyers and advisers to construct your whole employment setup. Employees start to bargain to receive their compensation in forms other than wages, they say, well, we want so much in the form of medical assistance, which is exempt from the code, so much in the form of group health benefits, which is exempt under the code, and——

Senator **Packwood**. Is the administration suggesting eliminating those exemptions, too?

Mr. **Lubick**. No; we are not at this time suggesting that. I think these are areas where we ought to study what is the appropriate means of taxation. I think the question of medical plans is tied in with health insurance and I think we have to go into this whole question of fringe benefits.

Senator Packwood. Now, the administration position really amazes me. At the moment if the employer provides tuition assistance to an employee related to the job that is not taxable income. If just for the employee to better themselves generally it is taxable and that seems to me infinitely more complex than to say none of it is taxable.

Mr. Lubick. No; I think there is logic to that because if the employee spends money out of his own pocket to maintain his skills, to preserve his position, he gets a deduction. When the employer provides for it you have the same result unless it is job related. However, I don't quite see why there should be an exclusion under a general program which requires only that an employer pays for the education. If I can reduce it to the absurd that would exclude dancing lessons or ski lessons or tennis lessons.

Senator Packwood. I won't argue with you about whether a handicraft course or snake charming course is a meritorious course. But just on the argument of complexity, I just don't agree with you.

Mr. Lubick. I don't think there is any complexity now. If the employer pays the tuition he simply includes it on the W-2 and withholds on it and ——

Senator Packwood. That is after you figure out whether or not it is related to your job, which is an initial decision you have to make under the present law.

Mr. Lubick. Well, the employer does not have to withhold on it if it is related to the job. The employer can make that decision. Basically, when we set up a series of exclusions from income, we increase the complexities of administering the law.

It seems to us that giving benefits tax free when they are subsidized by the employer—and not allowing deductions when they are paid for out of the employer's own pocket—would induce employment arrangements to be structured in such a way that, instead of taking cash, the employee would request that his expenses be paid. This would lead to a more complex type of barter economy, would increase complexity and would lead to inequity.

Some people would be paying for the same thing with after-tax dollars and others would get it tax free. There really is no stopping point. I suppose you could have an employer financed provision of food and lodging. Food and lodging are desirable. Self-betterment is desirable; so are housing and clothing. They are all desirable, but the mere fact that the employer pays for them is not a basis for excluding the benefits from the tax basis if they represent compensation for services.

In conclusion, I think I would like to restate the initial point which is that education policy should be treated as a unified whole and that tuition tax credit should be considered along with other measures to assist students. The administration is formulating educational proposals that would include an increase in the funds available to assist students attending institutions of postsecondary education. We would like to request direct expenditures for assistance be given due consideration at superior alternatives to tuition tax credits for higher education. Finally, in the area of employer provided education assistance, we would suggest that a general statutory exclusion is unfair and can ultimately represent a significant drain on Federal revenues.

Senator **Packwood**. Could I ask, I have no questions of my own, although I think Senator Moynihan does.

Mr. **Lubick**. We would be very pleased to.

Senator **Packwood**. Thank you.

Senator **Moynihan**. Thank you, Mr. Chairman.

Thank you, Mr. Lubick. That was a valiant effort. I would like to make first a general point to confirm you in what we are about here. There is one fundamental issue of public policy which this legislation is directed to, and that is to see that education does not become a State monopoly in the United States. That is our concern, and it is a concern which we would persevere with even in the face of some demonstrated inefficiency, if it were the case that such could be demonstrated.

We have heard, as you probably know, that in terms of—I am sorry about the word—"cost effectiveness," private education is astonishingly inexpensive. There are margins of four to one in elementary schools. So we are not in fact pressing the inefficient sector, to the contrary, but even if it were the inefficient sector, the diversity seems to us a value in its own right. And we do this, as we tried to make clear yesterday, after considerable experience in both our cases of helping to bring about perhaps more than just marginally the huge increase in the allocation of public funds to public education that has taken place in the last generation.

The data are striking. If you go back to 1947, which is the beginning of the postwar period, education as a proportion of GNP was 2.8 percent. By 1975 it was 7.9, a threefold increase.

In terms of expenditure, it went from $6 billion to $120 billion, a twentyfold increase, but in the process the private sector of education, the non-Government source of education became more and more pressed, became reduced.

As demography turned down in recent years, all of the loss in the elementary, secondary population has been in the private non-Government schools. We are faced with the prospect that, as Schumpeter predicted, the conquest of the private sector by the public sector will be completed first of all in the area of education, which perhaps is not surprising. It is where the Government first entered into what had previously been private activities a century and a quarter ago. But we would like to prevent this and I think that is not a question that you need be concerned about, the rights or wrongs, except as a citizen, but you should know what our purpose here is.

I would like to ask you two particular things. One is you are aware trat Treasury Secretary George Shultz in 1972, on behalf of a Republican administration, testified before the House Committee on Ways and Means in support of legislation that would have provided tax credits for elementary and secondary schools. Are you not aware of that fact, Mr. Lubick?

Mr. **Lubick**. I am now aware of the fact, but I was not before you spoke.

Senator **Moynihan**. They dared not tell you at the Treasury? They dared not tell you that a Republican administration believes in supporting the church-related schools of America and is it the case that a Democratic administration will not? It is a battle I have been having in my party since John F. Kennedy came to this town. I introduce into the record the support of the Republican Secretary of the Treasury on behalf of this fine legislation.

Senator PACKWOOD. Not only will it be admitted, it will be printed in large print.

[The information to be furnished follows:]

STATEMENT OF HON. GEORGE P. SHULTZ

Secretary SHULTZ. Thank you, Mr. Chairman and members of the committee. I welcome this opportunity to appear before you in connection with a subject which I believe to be very important, aid to nonpublic schools.

My testimony will be confined to title II of H.R. 16141. That is the portion of the bill which would give parents of students in nonpublic elementary and secondary schools a credit of up to $200 against their income taxes for tuition paid to those schools.

The administration strongly supports the goals of title II.

We believe that the existing system of nonpublic schools, which educates one-tenth of our children, is a vital national asset. The nonpublic school system provides a diversity which is healthy. It provides, in many instances, a proving ground for innovation and experimentation which is of great benefit to public education and the public generally. It shoulders a heavy burden of costs which would otherwise fall on the public generally. Large-scale closings of nonpublic schools, if allowed to continue, could be accompanied by disruption of countless communities and neighborhoods in which nonpublic schools are sources of pride and stability. We must do all that we can to prevent this from happening.

A tax credit is not a complete answer to the problems of nonpublic school parents. But it can help in a major way and it can be placed in operation quickly. We believe the credit proposed to be consistent with our existing system of tax deductions. The burden of maintaining private schools is carried primarily by the parents of students, by alumni and friends of the schools, and, in the case of sectarian schools, by contributors to the church or synagogue involved.

The Internal Revenue Code has since 1916 allowed deductions to alumni and friends for contributions to nonprofit nonpublic schools, and to members of religious congregations for church or synagogue contributions which are, in fact, used to support such schools. The present bill would extend similar benefits to the parents who are the third principal class of supporters of such schools. The fact that the tax benefit would come in the form of a credit, rather than a deduction, would serve to make the benefit more uniformly available to all taxpayers, regardless of their marginal tax rates. We do not believe the use of credit as distinguished from a deduction raises any constitutional problems.

On June 21 of this year, in a letter to you from Mr. Weinberger, the Director of the Office of Management and Budget, the administration pledged its support to the principle of a tax credit to parents for nonpublic school tuition. At that time we indicated that the proposals then under consideration needed modification in several respects. We are pleased to note that the most important of the modifications which we suggested has been adopted in H.R. 16141. That recommendation related to the amount of the credit. We proposed that there be given a credit for 100 percent of tuition up to $200 per child per year, instead of a credit for 50 percent of tuition up to $400 per child per year, as then proposed. Our recommendation was intended to give greater benefits to lower income tax families and to minimize the amount of tuition increases which might result.

We made two other recommendations, however, which we believe to be important and which have not been incorporated in the present bill. They are:

First, we recommended that the credit should be gradually phased out for families with adjusted gross incomes over $18,000. This would make the credit comparable with the deductions authorized for child care expenses under present law. The majority of taxpayers whose dependents attend nonpublic schools have incomes below $18,000.

Second, we suggest that an effort be made to devise a way that the credit or a comparable benefit can be made available to families who pay no income tax. We are puzzled by H.R. 16141 in this respect because the text of the explanation in the committee print indicates that a refundable credit is to be provided for this purpose, but the text of the bill itself fails to do so.

If the committee does indeed favor a refundable credit, we urge that it give careful attention to the question of whether there may be constitutional objections to the refundable feature, and we recommend that such a feature be made separable from the basic credit so that the constitutionality of the latter is not endangered. We believe a refundable credit would be desirable. However, if it should not be constitutionally possible, we believe that a nonrefundable credit is nonetheless desirable. A nonrefundable credit could be utilized by the great majority of nonpublic school parents. There are relatively few parents of nonpublic school students who pay no Federal income tax. Scholarship programs, or other forms of subsidized tuition, presently take care of many such students and would hopefully continue to do so.

There is one final, but important, constraint. If this legislation is enacted, a corresponding offset either by way of expenditure reduction or revenue increase would have to be found. I shall not add to Mr. Weinberger's testimony on this aspect.

The committee print explaining the bill contains a revenue estimate by the Joint Committee on Internal Revenue Taxation. It estimates an annual revenue loss of $584 million. We believe that to be a realistic estimate for a refundable credit, assuming no increases in tuition. However, there will surely be tuition increases, as one of the purposes of a tuition credit is to permit schools to raise tuition without losing students. It seems safe to assume that all schools will raise their tuition to at least $200. As the bill is now drafted without a refundable provisions, we believe the revenue loss would be $790 million per year. If a refundable provision were added, the revenue loss would rise to an estimated $970 million.

In closing, Mr. Chairman, let me repeat that although we suggest modifications to H.R. 16141, and must condition our support on the expectation that Congress will make adequate, offsetting adjustments in other expenditures, we are strongly in favor of the purposes of title II of the bill. Thank you, Mr. Chairman.

Senator MOYNIHAN. There you are, Mr. Secretary, Mr. Chairman. I do ask you to go back and ask why it was George Shultz made a very powerful case, not different from your own, that there is a vital national interest in maintaining diversity in the educational system. I am just joshing you a bit, but don't hesitate to tell your colleagues back there that if this administration wants to be known as opposed to this legislation, that is not hard—that can be arranged—but now I would ask you this. There is always that distinction between the administration and the President, but you do know that the President in his campaign specifically committed himself to support legislation such as this, do you not, sir?

Mr. LUBICK. I did not know that he committed.

Senator MOYNIHAN. He didn't say the Packwood-Moynihan——

Mr. LUBICK. I understand.

Senator MOYNIHAN. Let me read it to you. It is a statement of October 19, 1976, the last moments of a campaign—which are so productive of policy initiatives—[Laughter.] In a statement to the administrators of Catholic Education, President—then Governor—Carter, stated—

> Therefore, I am firmly committed to finding constitutionally acceptable methods of providing aid to parents whose children attend parochial schools. I am firmly committed to seeing that children attending parochial schools benefit fully from Federal educational programs.

Now, sir, the President has committed himself to this. Both parties have.

I wrote the Democratic platform, our plank in our platform. The Republicans made a notable reversal from the previous misfortune of the Republican platform of 1876, when all this misery began. Grant was trying to run for a third term and looking for an issue and introduced this one into national politics. It had never existed as an idea before.

A century later the platform of the Republican Party reversed itself, the platform of the Democratic Party in effect did the same. The candidate for President said he was for it, and in a sense President Ford represented an administration which had said it was for it. I mean, there is a clear political judgment in this country, and a legitimate one, that this ought to be done.

Why does the Treasury think it is not a good idea?

Mr. **Lubick**. We think that tuition tax credits are not necessarily within the ambit of that statement. Again, I think one should consider whether what is the most appropriate——

Senator **Moynihan**. Would you be prepared to come back with a better system for aiding private elementary and secondary schools?

Mr. **Lubick**. I think that is a question that you ought to ask the Department of HEW, fortunately.

Senator **Moynihan**. I don't want to harass you, but I do want to say one other thing. We heard yesterday that wearisome notion that if there is any support for private, nongovernment schooling, it will jeopardize support for public schooling. This is really the least powerful recommendation for public schooling that you could hear, if you think about it. I mean for three generations the advocates of public schools have been saying that unless we are a monopoly nobody will want to come to our schools, which isn't so. There are plenty of reasons and good ones to send, but the idea that any competition would jeopardize public support altogether is an unexamined proposition and you have repeated it, sir, perhaps unintentionally, suggesting that there would be "radical" effects if 10 percent of the schoolchildren in this country continued outside the public schools.

Now, I submit that the radical effect will be when no children in this country are in alternate schools, and I asked if there was anything in the literature on this and suggested there is a very little bit. I offered the hypothesis that there is a correlation between the proportion of children in nonpublic schools in a particular district and the level of support for public schools, not an inverse correlation. It is a direct correlation. That baffled and puzzled—why bring facts into an argument of this kind which has been based purely on emotion and prejudice for a century, since that unfortunate Republican platform of 1876.

Sir, we thank you. But, as you leave, bear in mind that the President's party is committed to this, the opposition party when in office had a firm and clear position, and George Shultz, an educator of the greatest distinction, and one of the finest Secretaries of the Treasury in our history, is on record. Please tell Dr. Blumenthal—he was a professor himself once—that Dr. Schultz testified very emphatically on this, and it disappoints us on this side that he couldn't in effect have done the same. Second, remember, that the President has committed himself in this area and we claim that this ought to have some consequence.

Senator **Packwood**. Just historically, Senator, in terms of the 1876 Republican platform, because I don't know if you fully set it out, that was on a platform plank calling for adoption of a constitutional amendment to prohibit aid to sectarian schools, at least certainly giving the assumption people at that time thought the aid was otherwise constitutional unless we passed an amendment to prohibit it.

Senator **Moynihan**. Sort of the tail end of the know nothing moment. Even then the proposition was put forward that you would have to amend the Constitution to forbid such activity because clearly the Republic was then a century old and such support had been taking place routinely under the eyes of John Quincy Adams and other such persons of such notorious puritan bent in these matters, and we are in fact dealing with the receding era that commenced in the late 19th century and we think it is running its course, but you are not helping, Mr. Lubick, the Treasury is not helping.

Thank you, sir.

Senator **Packwood**. I have no other questions.

Thank you, Don.

[The prepared statement of Mr. Lubick follows:]

STATEMENT OF DONALD C. LUBICK, ACTING ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY

Mr. Chairman and Members of this Subcommittee: I am pleased to appear here today to present the Treasury's views on bills that would provide relief in the form of tax credits for the expenses of education. With me is Emil Sunley, Deputy Assistant Secretary of the Treasury for Tax Policy, (1)

Before proceeding to analyze the various proposals for credits for educational expenses, we would like to make a formal request on behalf of the Administration: *That the various proposals for tax relief for education expenses be considered by the Congress along with basic educational assistance programs.* Only in this manner can the Federal government's programs and expenditures in assisting students be considered in a unified and comprehensive way. The Administration is formulating educational proposals that include an increase in the funds available to assist students attending institutions of post-secondary education. These proposals would provide assistance to families at higher income levels than is currently the case. (2) Only if tuition tax credits are considered along with other educational grant programs can we rationally allocate dollars spent for education in a comprehensive and integrated manner. Thus, a proper consideration of our views requires a necessary evaluation of available alternatives.

I will first discuss bills such as S. 311, which would provide a tax credit for the cost of tuition for higher education. Then I will discuss such bills as S. 2142, which would extend such a credit to tuition paid to elementary and secondary schools. Finally, I will comment on proposals related to education assistance programs provided for workers by employers.

COLLEGE TUITION TAX CREDITS

The Treasury Department supports the use of Federal monies for assisting students in meeting the costs of post-secondary education. However, the Department maintains its opposition to a tax credit because a credit is an improperly targeted and inefficient method of providing such assistance. We note that we are joined in this opposition by such groups as the National Education Association, Parent Teachers Association, and the AFL–CIO. The specific reasons for our opposition, are compelling:

(1) Contrary to popular belief—a belief that lies at the heart of the support for the measures—increases in student charges in recent years have *not* outpaced the rate of growth of family income;

(2) Relief in the form of a credit would operate to the disadvantage of private institutions of higher education;

(3) The benefits of the credit would go largely to families with incomes well above the median family income, thus having an adverse distribution effect;

(4) A credit is not an efficient means of encouraging investment in higher education;

(5) A credit would make current educational policy—already a maze—even more complex;

(6) A credit would increase the costs of higher education.

The Federal Government has substantially increased its investment in higher education over the last few years and, doubtless, will increase that investment over the coming years. However, that increased investment should be responsive to the greatest needs of our educational system, and not to an illusory need that focuses solely on price increases and does not take into account corresponding increases in income.

Private education.—We are also concerned about the competitive effect of relief through a tuition tax credit on private educational institutions. Let me illustrate the problem, using 1976 student charges. A tuition tax credit of $250 would reduce a family's total student charges for attendance at a private post-secondary school from $3,981 to $3,731 or by about 6 percent. However, it would reduce the total student charges of attending an average public school from $1,882 to $1,632 or by 13 percent. For the student living at home and attending a public institution, the percentage reduction in cost would be even greater. Thus, on the average, the cost of attending a private post-secondary school would increase relative to the cost of attending a public school and would increase even more relative to the cost of public school where the student lived at home.

A small tuition tax credit thus does little to reduce the absolute cost of private schools, and it may actually decrease their competitiveness with public schools. While it has proven difficult for various organizations of colleges and universities to formally oppose tuition tax credits for the parents of their students, I think that the lack of support from many of these organizations for such a measure indicates their own uneasiness. The Board of Directors of the National Association of Independent Colleges and Universities, for instance, stated in their December meeting that "a student aid approach is a higher priority than that embodied by a tuition tax credit."

Distributional effects.—From the standpoint of tax equity, a tax credit for tuition and related expenses would be an inappropriate tool to provide educational assistance.

First, a tax credit generally grants equal relief to taxpaying families regardless of their need and regardless of their costs of education. I believe that a program based on taxpayer ability-to-pay and the expenses of the educational institution in question would be better targeted to meet appropriate objectives of Federal policy. An across-the-board tax credit is thus inferior to programs of targeted grants or loans in meeting the goal of equalizing educational opportunity.

Second, and more specifically, the typical recipient of the tax credit would be wealthier than the average citizen. In 1975, the median family income of families with an 18 to 24 year old dependent in college was more than $4,000 greater than the median family income of all families with an 18 to 24 years old dependent and more than $6,000 a year greater than the median family income of all families. In a sense, a tuition tax credit might realistically be viewed as providing relief to upper-middle income taxpayers for the temporary liquidity problem associated with the transfer of wealth to children through payment of educational expenses.

Investment in higher education. It has been claimed that a tuition tax credit would permit more individuals to obtain a college education. Yet Government assistance is more likely to increase expenditures for higher education if it is designed to assist those who are on the margin in deciding whether to attend college. Since poor and low-middle income families are more likely to be at the margin, programs designed to assist such families are more likely to increase the number of students attending college—in general, to increase overall investment in education per dollar of Federal expenditure—than are programs that provide benefits to all families without regard to need. In fact, for a family that will spend the same for higher education regardless of whether the credit is available, the credit ends up providing resources for their consumption of such items as food, clothing or recreation. The credit then becomes selective tax relief pure and simple—not a subsidy for education.

Complexity.—I realize that the argument has been made that a tuition tax credit would be simple to administer. Yet adding an additional program onto an already large number of Federal and state programs inevitably increases complexity of both the tax system and the educational system. For example, most tuition tax credit bills require that grants received elsewhere be taken into account in determining net tuition costs, and grant and loan programs similarly would need to take into account a tax credit in determining levels of assistance.

Moreover, the Internal Revenue Service is not staffed or equipped to monitor educational institutions to determine if their courses meet the necessary requirements for tax credits, nor should it be asked to check on students to see if they are meeting requirements such as full time attendance for a tax credit. The Service does not want to duplicate the administrative efforts of other agencies. A tuition tax credit moves the administration of educational policy away from that agency of the Federal Government that is and should remain responsible for trying to bring some consistency and rationality to the existing program structure.

Effect on student charges.—Finally, it is entirely unclear how much of the credit would even remain with the recipients. Some of the benefits would be shared with institutions of learning through higher tuition charges. In the simplest case, we would certainly expect that the amount of the credit would set a *floor* on the tuition charges of eligible institutions. It is equally apparent that a rise in tuition by the amount of the credit would leave the net burden on recipient families the same. As with most subsidies, it can be expected that some of the benefits of the subsidy will go to the suppliers of the services—the college and universities—as well as the purchasers—the students and their families and thus that at least some of the benefits to the recipient will be drained through higher tuition costs. In the case of publicly supported higher education, the credits may result in higher tuition charges and thereby indirectly substitute Federal support for State and local support.

ELEMENTARY AND SECONDARY EDUCATION

Extending a tuition tax credit for tuition charges paid by families for the cost of elementary and secondary education raises a number of problems that are different from those bearing on a tuition tax credit for higher education. At this time, Treasury opposes extending a credit to tuition costs of primary and secondary education. Again, we note that we are joined in this opposition by such groups as the National Education Association, the National School Boards Association, and the Parents-Teachers Association. The reasons for Treasury's opposition are as follows:

(1) The credit initially would be expensive and revenue costs would rise over time even without an increase in the basic credit amount;

(2) A credit raises a number of serious issues related to the nation's historical commitment to public school education.

Let me briefly review these points:

Revenue cost.—There is additional revenue cost in extending the credit beyond higher education. For instance, in S. 2142, extending a nonrefundable maximum credit of $500 or 50 percent of tuition charges to elementary and secondary education raises the cost of the bill by about $1 billion to $4.7 billion at 1980 levels of income. However, theser are at least two reasons why this revenue loss would increase over the years even without an increase in the maximum credit amount. First, as with the tuition tax credit for higher education, schools could be expected to increase their tuition charges in order to share in the benefits of the credit. Second, the number of students attending private elementary and secondary schools could also be expected to increase, and thus the cost to Federal taxpayers would rise further.

Effects on public school education.—Any increase in private school attendance would also have serious repercussions on public schools.

First, an increase in private school attendance would correspond to a decline in the number of students attending public schools. A number of public school systems recently have undergone dramatic changes because of declines in birth rates, and a further decline would place further strains on those systems.

Second, a credit might be interpreted as an incentive for State and localities to charge tuition for public education at the primary and secondary level. Certainly, in the short run, it is doubtful that there would be any dramatic effects of the credit on charges by public schools. Institutionally, tuition charges currently are not allowed in most States and localities. However, in the long run, it is not clear what the incentive of a tax credit may do. Perhaps a small charge for books or other fees would be allowed, or some minimal tuition charge in place of a minimal fee schedule. Whatever the eventual reaction, the bill clearly reverses past practics by offering an incentive to charge such tuition or fees.

Third, substantial progress has been made over the last 15 years in the desegregation of both public and private schools. The effect of a tuition tax credit in this area is an unknown factor, and I hope that this Subcommittee would examine all possible ramifications of a credit in this area before taking action. At a minimum, it is clear that the credit would make it easier and cheaper for a student to attend a private school if his family wished to avoid an integrated public school.

I realize that most bills limit the credit to expenses of tuition and fees at tax-exempt institutions in order to prevent the credit from going to schools that have had discriminatory racial policies. Even here there is a difficulty, however, because some non-tax-exempt institutions, particularly vocational schools, have not foregone tax exemption because of segregation, but because they are profit-making.

Fourth, without a phase-out of benefits for higher income taxpayers, some of the credit would certainly go to families with substantial income and which sent their students to elite private schools. Given our commitment to providing equality of opportunity through our public school systems, I seriously question whether public monies given to those families would be well spent.

Employer-provided education assistance.—Tomorrow this Subcommittee will hold hearings on legislative proposals regarding education assistance programs provided for workers by employers. We have been requested to comment briefly on this subject at this time. Under the proposals, education assistance received by employees would not be regarded as taxable income to employees. Treasury opposes a general statutory exclusion from income for employer-provided education assistance.

Equity requires that if compensation received by some employees is taxed, compensation received by other employees should also be taxed. Compensation received in kind, such as compensation received in the form of education benefits, is just as valuable as compensation received in cash. An exclusion for employer-provided educational assistance would allow students who receive education benefits from their employers to receive those benefits tax free, while other students must pay for their education out of after-tax income. A principle of our tax laws has been that those with equal incomes should pay equal taxes, and each violation of that principle erodes the confidence of taxpayers in that system.

Moreover, any proposal that provides that certain types of income not be taxed encourages taxpayers to rearrange their affairs so that taxable income is received in a non-taxable form. An exclusion for employer-provided education assistance would be likely to produce a growing revenue loss to the government.

It has been suggested that employer-provided education assistance programs should be encouraged because they promote the advancement of low-income employees with limited education or training. However, middle- and upper-income employees also receive education benefits, and, when benefits are provided tax free, those taxpayers with the highest incomes receive the greatest benefits from the tax exemption. National education policy should not be created in such a manner that those with the least needs receive the greatest benefits. Poor persons who receive employer-provided benefits which are subject to tax are nonetheless not taxed on those benefits because their total incomes are too low. The President's tax proposals will raise these tax-exempt levels of income even more. It is by raising tax-exempt levels of income that a direct and equitable attack can be made on the problems of those persons at or near poverty levels, not by providing an exemption to a selected group of persons, only some of whom may be poor.

Finally, if employer-provided education assistance were excluded from income, administrative complexity could result. For instance, a rule would be needed to prevent one- or two-person corporations from converting all their normal personal education expenses into deductible expenses of the corporation.

Consideration should also be given to the relationship between an exclusion for employer-provided education benefits and the current tax treatment of education expenses. In many cases, education expenses are already deductible by the employee as business expenses under Code Section 162 and, hence, in effect exempt from tax. In some cases, the value of deductible employer-provided education benefits need not even be reported on the employee's return. If the primary reason for proposing an exclusion is disagreement with existing rules on the circumstances under which education expenses are deductible as business expenses, consideration should be given to simply modifying those rules on deductibility. Such an approach would properly be more narrow in scope than a blanket exclusion. Such an approach would also avoid favoring employer-financed education over education financed by the individual student.

CONCLUSION

I would like to conclude by repeating my appeal to you: Treat educational policy more as a unified whole, and consider tuition tax credits at the same time that other measures to assist students are considered. The Administration is formulating educational proposals that include an increase in the funds available to assist students attending institutions of post-secondary education. We would like to request that direct expenditures for assistance be given due consideration as a superior alternative to tuition tax credits for higher education.

As for extending credits to elementary and secondary schools, we oppose such a proposal at this time both because of its costs and its possible effects on our historical commitment to public school education.

Finally, in the area of employer-provided education assistance, we oppose a general statutory exclusion from income because of the unfairness that such an exclusion would create and because it could represent a significant drain on Federal finances.

Senator PACKWOOD. Our next witness is Richard Warden, Assistant Secretary for Legislation at HEW.

Are you ready, Mr. Warden?

Mr. WARDEN. Yes, sir.

Senator PACKWOOD. You may proceed.

STATEMENT OF RICHARD D. WARDEN, ASSISTANT SECRETARY FOR LEGISLATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY LEO KORNFELD, DEPUTY COMMISSIONER FOR STUDENT FINANCIAL ASSISTANCE, OFFICE OF EDUCATION; AND MARGARET DUNKLE, EDUCATION SPECIAL ASSISTANT, OFFICE OF ASSISTANT SECRETARY FOR LEGISLATION, HEW

Mr. WARDEN. Thank you very much, Mr. Chairman.

Mr. Chairman, my name is Dick Warden. I am Assistant Secretary for Legislation at HEW. Accompanying me today on my left is Leo Kornfeld, Deputy Commissioner for Student Financial Assistance in the Office of Education; and on my right, Margaret Dunkle, an Education Special Assistant in my office. Also seated behind me is Ray Peterson, another Education Special Assistant in my office.

I have a prepared statement which I would like to file for the record. In addition, I would like to read the text of a letter from Secretary Califano addressed to Chairman Byrd setting forth our position on the issue of education tax credits.

Senator PACKWOOD. Your statement will be in the record in full.

Mr. WARDEN. Thank you, Mr. Chairman.

The statement which we are filing for the record elaborates on the points contained in Secretary Califano's letter.

Quite frankly, Mr. Chairman, we would have preferred giving this testimony a little later this year, after more of our internal decisions, particularly in the area of higher education, had been made. If that had been the case, it would have been possible for us to be much more specific about our proposals to deal with the questions upon which these hearings have been called.

Unfortunately, that is not the case, and our testimony will necessarily be somewhat less explicit than would have been possible a little later.

With your permission, Mr. Chairman, I will read into the record Secretary Califano's letter to Senator Byrd, summarizing our position. Then we will be prepared to answer any questions you may have.

Mr. WARDEN [reading]:

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., January 18, 1978.

Hon. HARRY F. BYRD, Jr.,
Chairman, Subcommittee on Taxation and Debt Management Generally, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, there has been considerable discussion of tuition tax credit proposals in this Congress. I would like to take this opportunity to share with you the Department's views on this important issue. Our Assistant Secretary for Legislation is prepared to outline the Department's position on tuition tax credits in more detail.

Tuition tax credit proposals would affect both tax and education policy and, therefore, should be evaluated with respect to both of these considerations. We firmly believe that tuition tax credits do not represent good education policy. This Administration is concerned about the financial problems facing middle income families, including middle income families with children in college. While recognizing the problem, however, we believe that the tax credit approach to this problem is so seriously flawed that it should be rejected.

Many middle income families are encountering serious financial problems caused by a failure of their income levels to keep pace with the increasing costs of some institutions. However, many other families have enjoyed increases in income which are greater than average increases in college costs. A serious flaw of many tax credit proposals is that the benefits would not be targeted appropriately on those families with the most serious needs. Direct student assistance programs can be so targeted, resulting in better use of Federal dollars.

As a part of our development of postsecondary reauthorization measures, HEW is currently engaged in an exhaustive review of the entire Federal effort in postsecondary education and is analyzing a wide variety of modifications in current student assistance programs. Included in this review is an analysis of how we may be able to extend more effectively some of our existing student assistance programs, not only to low and moderate income students, but to students from middle income families as well.

We anticipate that some of these changes might be made administratively and, therefore, quickly. Some may require changes in the regulations currently governing the operation of the Department's student financial aid programs. And some may require legislative action by Congress if they are to take effect.

This Administration is serious about taking prompt and effective action to relieve the real financial problems facing families with students in college. We firmly believe, however, that the most effective way to provide such aid is through direct expenditures for student financial aid programs.

We recognize that meeting the needs of many of these families will entail additional costs. Although the Department's plans are not yet complete, I will outline briefly some of the types of changes we have under consideration.

The Basic Educational Opportunity Grants Program now provides the cornerstone of Federal aid to low and moderate income students. We are considering expanding the program to provide grant aid to students further up the income scale by making it easier for middle income students to qualify. Members of Congress have also suggested changes to make the Basic Grants program more responsive to middle income families in need. For example, Senator Pell, Chairman of the Subcommittee on Education of the Human Resources Committee, just last week made recommendations as to the expansion of the BEOG program.

For many middle and upper-middle income families the main financial problem is liquidity or cash flow. Here, where the issue is not the ability to pay over time but difficulty in paying large, lump-sum education costs, a loan program may be the appropriate response. With this objective in mind, we are reviewing several options to make loan programs more responsive to the needs of middle income families. For example, we will be investigating ways to increase the number of middle income students eligible for subsidized Guaranteed Student Loans, as well as ways to increase the amount of capital that banks are willing to make available to these students.

We are also investigating the effecectiveness and probable impact of increased funding of the other aid programs—including the Supplemental Opportunity Grant Program, the State Student Incentive Grant Program and the College Work-Study Program. In addition, we are reviewing the analysis and suggestions the Congressional Budget Office released today.

At the elementary and secondary level, the primary focus of Federal aid is to assist states in providing public education. The elementary-secondary budget increased from $2.54 billion in 1969 to $6.02 billion in fiscal 1978.

While we strongly support public elementary and secondary education with Federal funds, we also provide some support to pupils in private schools. Under Titles I and IV of the Elementary and Secondary Education Act, we provide compensatory programs, diagnostic services, books, and other instructional materials to private schools. We are taking steps to assure that eligible private school children have full access to these Federally financed services within the constraints imposed by the Constitution.

The reasons for the Department's opposition to tuition tax credits are many. Briefly stated, our opposition is based on the following points:

Tax credits provide the most benefits to those who need them the least.

Tax credit proposals would further fragment Federal education policy.

Tax credits are expensive.

Tax credits could make other education funds more scarce.

Tax credits would add to the administrative burden of, and increase paperwork by, institutions, the IRS and the taxpayer.

There are no easy answers to the financial problems facing middle income families, especially middle income families with one or more children in college. But we believe that a tuition tax credit would be both ineffective and inequitable when compared with other alternatives. Direct aid programs which take into account family need and the actual costs of education are a much more desirable way of helping students and their families. We will work quickly to develop these alternatives and look forward to working with the Congress towards this end.

OMB advises that enactment of these tuition tax credit proposals would not be consistent with the Administration's objectives.

Sincerely,

JOSEPH A. CALIFANO, Jr.

Senator PACKWOOD. Are you done?

Mr. WARDEN. Yes, sir.

Senator PACKWOOD. Why are tax credits an increase in paperwork for institutions?

Mr. WARDEN. There would have to be forms, one would assume, to establish the eligibility of the individuals who are receiving the tax credits.

Senator PACKWOOD. They have got to go through all that paperwork now to establish that they are eligible for any of the other grant programs.

Mr. WARDEN. We have conferred with the Treasury Department on this, and they have advised us they feel it would be an administrative burden for IRS which they don't have now.

Senator PACKWOOD. Let's talk about the institution. You go to college and pay $800 tuition for which you get a receipt and attach it to your income tax and take $400 off your income tax. Why is that an increased burden to the institution?

Mr. WARDEN. There would have to be monitoring of institutions eligible to participate in these programs.

Senator PACKWOOD. Is that any additional monitoring to what now has to be done to make sure they are eligible to participate in the BEOG and other programs?

Senator PACKWOOD. Let's be very clear what the Oregon vote was. What it was was an amendment to change the constitution, the constitution as drawn and still exists, because the vote failed, to prohibit the proposition or expenditure of money from the public treasury for sectarian purposes. The vote was simply to change and adopt as our religious clause in the constitution the exact words of the present U.S. Constitution.

The issue was never posed on tax credits. The issue was never posed at all on any relation to the way that this bill approaches it.

Mr. **Doerr.** The proposal in Oregon was almost identical to the proposal in New York 5 years earlier, and it was interpreted by everyone as "Why change the State's constitution at all; what is the purpose?" The purpose was to eliminate the restrictions in the State constitutions of both New York and Oregon on any kind of tax aid for denominational schools, and this is the issue that was fought out in the arena of public opinion. That is what people were voting for or against.

Mr. **Warden.** It would be monitoring presumably by another agency. I suppose that could be straightened out administratively, but if the responsibility for administering tax credits were given to the Treasury Department, as I assume it would be, you would have a parallel responsibility.

Senator **Packwood.** Do you really think that the BEOG program is less complex than a tax credit?

Mr. **Warden.** We are trying to make it as simple as we possibly can during our preparation for postsecondary reauthorization. We are considering a number of changes to simplify that program.

Senator **Packwood.** Are you familiar with recommendations for improved management of the Federal student aid program, a June 1977 HEW study?

Mr. **Kornfeld.** Which report is that, Senator?

Senator **Packwood.** A June 1977 report to the Secretary, recommendations for improved management of Federal student aid programs.

Mr. **Kornfeld.** Yes, sir, that was the report of a special committee.

Senator **Packwood.** And they requested that HEW report back in 6 months from the time of the report which, of course, is last month. What have you reported?

Mr. **Kornfeld.** I would like to tell you, Senator, that many of those recommendations in that report have been implemented.

Senator **Packwood.** Which ones have been implemented to make the program simpler?

Mr. **Kornfeld.** The BEOG application has been implemented. The committee is now working, for example, to eliminate the tripartite application, and to simplify the way funds are calculated for distribution to States in the campus-based programs. Also, a simple document clearly describing these programs so that the public will know their provisions will be out in the next 2 or 3 weeks. Those are examples that just come to my mind.

Senator **Packwood.** When Senator Moynihan and I introduced this bill we subscribed to a clipping service to check around the Nation to see what people thought of it, editors thought of it. I cannot guarantee our clipping service has indeed found everything, but to date what they have found, as far as student newspapers are concerned, is 100 percent endorsement of the Packwood-Moynihan bill and in several instances indicating that it is infinitely preferable to the BEOG program because of complexity, whereas this program is simple.

Mr. **Kornfeld.** Well, regarding the complexity of the BEOG program that application is too complex and we are working very strenuously to reduce the complexity. For example, this year alone, because of the multiple data entry system that has been implemented, 2.5 million less applications will have to be prepared because we are going to use the need analysis data, rather than have the student prepare a Government form, this congressional year.

Although you might talk about complexity of the form, Senator, the BEOG program provides assistance much more significantly than a $250 tax credit. As you know, awards under the BEOG program are based on a need analysis and can provide each student with up to $1,600.

Senator **Packwood.** I am going to place in the record four or five charts from this report which are the flow charts of the different student aid programs, and they look like every other flow chart you have ever seen of every other Government program, boxes and arrows going in different directions. It is almost incomprehensible to read the chart, let alone to operate under it.

And I have yet to see much that has come that is going to indicate the programs are going to be simpler, certainly simpler than what Senator Moynihan and I are suggesting. I think both of us are going to emphasize—I am pledging myself I am not going to vote to cut one whit out of the money we commit to the BEOG program and/or student programs to education, and I think I can speak for Senator Moynihan on that.

We do not regard that as a satisfactory alternative to what we are proposing.

Mr. **Warden.** Mr. Chairman, during the process of reauthorization of the Higher Education Act, and the Higher Education Act does expire next year, we will be coming up with a proposal for extending that act. We are trying to simplify all of those programs which will expire at that time.

Senator **Packwood.** Well, you know, I remember, Pat, when we had Secretary Califano up here for confirmation and your comment about no matter what Secretaries say as to simplification, when they go out, I recall your marvelous statement, "And recall, Mr. Secretary, that the half life of a Secretary is 18 months. When you go out there are more regulations than when you come in."

I will read one of the paragraphs in the letter to Secretary Califano from Mr. Perkins.

> A host of studies, especially since 1973, have pointed to the need for serious reform in the area of Federal student financial aid. Unfortunately, however, little has changed. The work of the study group confirms the existence of serious problems, some of which may undermine the integrity of the programs as well as public confidence in them.

This report refers to 1973. The bulk of that was under a Republican administration and for that we can take blame, but I have yet to see any change.

Mr. **Warden.** Mr. Chairman, we hope very much that you will see some changes. We think we are cutting back on regulations. We are working very hard on that right now and I hope within the next few months you will see some changes.

Senator **Packwood.** On page 3 of your letter to Senator Byrd you say that "While we strongly support public elementary and secondary education with Federal funds, we also provide some support to pupils in private schools." And then you talk about title I and IV and diagnostic services what what-not. Those are the educational fringe costs. Those are not the gut costs of education.

What is the administration going to propose in accordance with President Carter's statement which Senator Moynihan read, for significant support to primary and secondary education?

Mr. **Warden**. This year, as you know, Senator, the Elementary and Secondary Education Act will have to be reauthorized. It expires this year. We are right now in the process of considering a number of proposals which we think will help in this area. The principal Federal programs which authorize services to nonpublic schools are titles I and IV of the Elementary and Secondary Education Act. Title I requires local educational agencies to provide for the participation of private-school children on an equitable basis. Title IV contains a similar requirement and, in addition, requires that per pupil expenditures under title IV for private-school children be equal to those for public-school children, taking into account the need of individual children and other factors. However, because of court cases, State constitutional requirements, and so forth, this intent of title IV programs has not been fully met. Indeed, provisions to facilitate participation of private-school children in programs under the Elementary and Secondary Education Act in these particular titles has not been fully carried out.

We are right now considering making some proposals which we hope will help to address this problem. We recognize the problem. We haven't fully refined these proposals, so I can't be too specific. But we hope to require the States to assess what they have been doing and to come in and to report to us what they plan to do to insure equitable services for private-school children under the Elementary and Secondary Education Act.

Senator **Packwood**. Which if fully implemented will still be the fringe educational cost for those private institutions. I am not demeaning those. I hope we extend them.

Mr. **Warden**. I think the Federal contribution to public education in this country is 7 percent at this time. And I suppose you could call that a fringe contribution, too——

Senator **Packwood**. Well, in other words, you have nothing specifically yet to recommend at the moment today?

Mr. **Warden**. We will have, Senator, very shortly.

Senator **Packwood**. How soon?

Mr. **Warden**. The Secretary is probably going to testify the week of February 20 on the House side on extension of the Elementary and Secondary Education Act. We hope to have our bill pulled together by the middle of February.

Senator **Packwood**. I have no other questions. Pat.

Senator **Moynihan**. Thank you.

Mr. Warden, we welcome you to this committee. You are a good friend of ours and we work together on a great many things, and nothing that I will say to you this morning is intended to be personal. You know it is not.

Mr. **Warden**. I appreciate that.

Senator **Moynihan**. Mr. Kornfeld and Miss Dunkle, we welcome you.

Mr. Warden, where is the Assistant Secretary for Education of HEW?

Mr. **Warden**. The Assistant Secretary for Education, where is she today?

Senator **Moynihan**. Yes.

Mr. **Warden**. I don't know where she is today.

Senator **Moynihan**. Where is the Commissioner of Education?

Mr. **Warden**. Mr. Kornfeld is here from the ——

Senator **Moynihan**. Where is the Commissioner of Education?

Mr. **Warden**. The Commissioner? I am not aware of where he is.

Senator **Moynihan**. They are hiding. They are hiding from this issue. That is where they are, sir.

Mr. **Warden**. I don't think they are, Senator.

Senator **Moynihan**. I will tell you from a quarter century of experience, they are hiding. Here we have the most important piece of educational legislation in a generation. We have 50 sponsors from the U.S. Senate, 14 of the 18 members of the Committee on Finance, and the principal educational offices of the Government dare not even appear to testify on it. They send you, Mr. Kornfeld and Miss Dunkle.

Mr. **Warden**. They didn't send me, Senator. Secretary Califano sent me.

Senator **Moynihan**. He is hiding, too.

Mr. **Warden**. No; he isn't hiding, Senator.

Senator **Moynihan**. Where is he?

Mr. **Warden**. He has some other commitment this morning, and that is why I read his letter into the record and filed the statement, rather than doing it the opposite way.

Senator **Moynihan**. This meeting has been scheduled for 2 months, this hearing.

Mr. **Warden**. Pardon me?

Senator **Moynihan**. These hearings have been scheduled for 2 months.

Mr. **Warden**. We weren't informed 2 months ago of these hearings. We knew you were planning to have early hearings because we were informed ——

Senator **Moynihan**. I am speaking generally.

Mr. **Warden**. OK.

Senator **Moynihan**. You know I don't think they are actually cringing in terror on the seventh floor of HEW.

Mr. **Warden**. I hope not.

Senator **Moynihan**. The bureaucracy, the interests they represent, are hiding from this question because we are in fact raising the issue of does the State intend to destroy the private sector in education, will it insist upon a monopoly?

Now, sir, let me say to you, and Mr. Warden, you have an honorable career representing the United Automobile Workers, and I know it is not easy for you now to represent bureaucrats you have never met and are never going to meet. I am not in any way being personal and you don't have to answer these questions, but I hope you will take these questions back.

You say in your testimony, or rather the Secretary says, the reasons for the Department's opposition to tuition tax credits are many, are many.

I am here to say to you that is not so.

There are not many reasons. There is one reason, and that is to press the State monopoly in education. It is the institutional drive, it is the ideological drive, it is the consuming ambition of this one Government bureaucracy which truly is power mad.

If you would like to know, look at your own testimony on page 7 where you say an elementary-secondary tuition tax credit could undermine the principle of public education in this country and install the Pope in the White House. It is the same intellectual level of argument. The fact that 10 percent of the children in this country, this continental nation, might be in nonpublic schools threatens to undermine the very system. It is an ideological argument of disgraceful intellect, and you say this—not you, you didn't write this—who wrote it?

Mr. WARDEN. It was written cooperatively.

Senator MOYNIHAN. Sir?

Mr. WARDEN. It was written cooperatively, as most statements are.

Senator MOYNIHAN. Who wrote it?

Mr. WARDEN. We did.

Senator MOYNIHAN. Watch that "we." Be careful. Who wrote it?

Mr. WARDEN. We wrote it in my office.

Senator MOYNIHAN. All right. Let me tell you about an evening I spent recently and I will take the liberty, if I may, Mr. Chairman, to just read from a commencement address I gave last spring about this, I am talking about the thrust of Government education to destroy non-Government education.

I was struck by this the other evening in Washington at a conference at the Woodrow Wilson International Center for Scholars convened on the subject of "The Role of the Federal Government in American Education During the Last Quarter of the 20th Century."

The Office of Education put up the money to engage the energies of five former U.S. Commissioners of Education to prepare materials and lead discussions that would lead to a statement on the subject. This is a familiar process in Washington, the Government purchasing the advice it desires to receive.

I would like to find out how much money they paid those former Commissioners. Would you do that for me?

Mr. WARDEN. Yes, sir.

Senator MOYNIHAN. Let's find that out.

[The following was subsequently supplied for the record:]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., February 24, 1978.

Hon. HARRY S. BYRD, Jr.
Chairman, Subcommittee on Taxation and Debt Management Generally, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter provides the information which Senator Moynihan requested when I testified on January 19 before the Subcommittee on Taxation and Debt Management on Tuition Tax Credits.

Senator Moynihan requested that I provide him with information regarding a conference or dialogue sponsored by the Woodrow Wilson International Center for Scholars on "The Role of the Federal Government in American Education During the Last Quarter of the 20th Century." Specifically, the Senator asked what the five former U.S. Commissioners of Education who participated in this conference were paid.

This conference was sponsored by the Woodrow Wilson International Center for Scholars and it is my understanding that Center staff developed the invitation list. The Center received $43,000 from the U.S. Office of Education for this conference.

We have conferred with Center staff and confirmed that the five former Commissioners received reimbursement for expenses only; they did not receive a fee or honorarium. They report that as of January 20 of this year, the former Commissioners received the following amounts:

Harold Howe, II received no reimbursement whatsoever, because of a Ford Foundation policy to that effect.

Terrel Bell received $320.95 reimbursement.

Francis Keppel received $602.80 reimbursement.

Sidney P. Marland, Jr., received $609.96 reimbursement.

John Ottina received $91.00 reimbursement.

We would appreciate this letter being made a part of the hearing record, as Senator Moynihan requested.

Sincerely,

DICK WARDEN,
Assistant Secretary for Legislation.

Senator MOYNIHAN. I had a hand in founding the Wilson Center and served as vice chairman of its board and accepted an invitation to be present on this occasion. I arrived as the guests assembled for dinner in the splendid great hall of the castle, as we refer to Renwick's great Smithsonian building on the Mall and in the glow of the candlelight I required if in the proceedings so far any mention had been made of the Federal role in nonpublic education.

Now, here are five former Commissioners of Education. They have been a year at Government expense thinking about the last quarter century of education in America. I asked had any mention been made of the Federal role in nonpublic education. None.

Later in the evening at my suggestion one question was asked but it was not answered. I looked at the guest list. Not a single representative of Catholic education was present and, as I learned, none had been invited.

As for the Commissioner's draft report, nonpublic schooling simply did not exist.

These are serious men and I have known each of them in office. They have served under Presidents of both parties, parties which openly discussed this matter in their national platform. Indeed one of the Commissioners present was the one with whom I negotiated the language of the 1964 Democratic platform which the Catholic bishop took to be an undertaking to provide their schools a measure of Federal aid. As I have said, the bishops kept their word, but the Federal Government did not keep its word.

How can five former U.S. Commissioners of Education spending public moneys to consider the future of the Federal role in education leave Catholic schools out completely, both elementary and secondary schools and Catholic institutions of higher education as well? I will speak only to the elementary and secondary schools. It is painful to state, but I believe necessary. A distinguished Catholic scholar put it to me in plain words. He said, They just don't think those schools should be there. So they act as if they aren't.

Your Department doesn't think they should be there, sir. And you are acting institutionally as much as you can to destroy them.

Now, sir, let me say what we have said before in these hearings. I hope you are listening very seriously, and I think you are.

Mr. WARDEN. I am, Senator.

Senator MOYNIHAN. Senator Packwood and I have been involved with public education most of our lives, and because I am saying some of the things I have said, I have to speak now in a manner which is not necessarily becoming, but I will do it anyway for the record.

That there is an Elementary and Secondary Education Act, is at least partly the consequence of and possibly significantly the consequence of an agreement I negotiated on behalf of the administration, with the U.S. Catholic Conference, the National Catholic Welfare Conference in 1964, prior to the Democratic Convention at Atlantic City. The effort to get Federal aid to education—a huge issue in those days—had not succeeded in the Congress because the Bishops felt, and I think they were right to feel that they had a right to share in such a program. That the legacy of nativism from the late 19th century had run its course and there had been enough of it and all they asked was a share as we drafted a sentence in the Democratic platform which committed us to giving aid to all pupils in all schools, and they said if that is in the platform we will support a bill.

You can find this little scrap of orthopedic equipment and that little bit of dislectic gear to help, but you haven't given a penny to these schools really, and you don't mean to, you mean to destroy them. You don't think they have a right to be there.

If you did, your Commissioner of Education would be here, your Assistant Secretary of Education would be here. But you want to destroy these schools and the idea that now that the Elementary and Secondary Education Act somehow is going to be renewed, you will do something—well, you will do nothing because you do not need the political support that brought the legislation into being. You won't do a thing. I am telling you now that you won't. The people in that building think these other schools do not have a right to exist.

Mr. WARDEN. Senator——

Senator MOYNIHAN. May I just add that I wrote to Secretary Califano saying to him that it was curious what the five former U.S. Commissioners of Education had just done, had wiped out the existence of nonpublic schools in their thinking. He wrote back to me on September 12, and—he didn't write this letter either—he said, "We are committed to quality education for all American schoolchildren." A startling revelation. Amazing.

> We are, therefore, interested in any legislative proposals which seek to expand opportunities for aid to education for children enrolled in public or nonpublic schools.

He said we are interested. But, how interested is he? Was he interested enough to send even his Commissioner of Education to these hearings?

Mr. WARDEN. We are interested enough to try to make some improvements in the reauthorization of the Elementary and Secondary Education Act this year. I would also like to point out, sir, for the record, that I don't think we are interested in destroying nonpublic education.

Senator MOYNIHAN. You aren't?

Mr. **Warden.** No; I certainly am not, and Secretary Califano is not either.

Senator **Moynihan.** Why is he letting the bureaucracy proceed? They want to destroy them.

Mr. **Warden.** The other thing, Senator, I would like to point out is that I, too, have been around since the early sixties. I was working on the House side for Congressman Jim O'Hara, who in 1963, 1964, 1965 was a member of the Education and Labor Committee. Before that I worked with Lee Metcalf in 1961. I am very familiar with what has happened in the education scene, too. I have been very much involved in it. I knew something about your involvement in that in the 1964 convention. The Elementary and Secondary Education Act does provide authorization for assistance to nonpublic schools. We recognize that there are problems in those provisions and we are trying to improve them in the reauthorization process this year. We are serious about that.

Mr. **Kornfeld.** I might add—not talking about elementary schools—a point regarding colleges and universities which is somewhat related. In the campus-based programs something on the order of 40 percent of the student financial assistance funds went to private and proprietary schools.

Senator **Moynihan.** In higher education?

Mr. **Kornfeld.** In higher education.

Senator **Moynihan.** Well, right. But before I go to higher education I want to ask one more question. You are being very patient.

Senator **Packwood.** Go right ahead.

Senator **Moynihan.** Well, I have been waiting a long time to be able to say this to an administration representative.

One of the reasons Mr. Boyer is not here, I speculate, is that at a convention of nonpublic schools here in Washington last November, he said "private education is absolutely crucial to the vitality of this Nation and public policy should strengthen rather than diminish these essential institutions."

Mr. **Warden.** No, sir, I don't think so.

Senator **Moynihan.** Why isn't the Assistant Secretary for Education here? She doesn't have to support this particular one, but we have found it constitutional.

Mr. **Warden.** I am sure she was——

Senator **Moynihan.** Are you trying to get him to lose the next election?

Mr. **Warden.** No, sir.

Senator **Moynihan.** Because I will go up and down the State of New York and say that the administration broke its word. I am tired of people lying to us on this subject. I wrote it into the platform this year. We made a commitment, and the Government keeps lying to us. The President could make a solemn commitment and then look what happens, they dare not even send the Commissioner of Education to testify on a bill with 50 Senators as cosponsors.

Now, sir, on the question of higher education, can I just make this one point. I repeat, I will go up and down the State of New York speaking on this issue.

Senator **Packwood.** Would you go outside the State of New York? [Laughter.]

Senator Moynihan. I just feel that strongly about it. It is time—did you say something?

Senator Packwood. We do not have any Senate races up in New York next year. However, did the reporter get the statement?

Senator Moynihan. Our party has got to be honest with itself. If we don't believe these things, then we should stop saying them in the last moments of an election.

Mr. Warden. I think the President meant what he said when he made the statement.

Senator Moynihan. Does he know that the Commissioner of Education or Assistant Secretary is not here today?

Mr. Warden. I don't know whether he does or not.

Senator Moynihan. He ought to. Would you give him my compliments and suggest that he ought to because he made the promise when he was looking for votes and then the vote comes in and that is the end of it. Over and over. I won't go through the sociology of it, but it is a very simple thing. The votes in the Democratic Party have come from Catholics of whom the elites very much disapprove, particularly their separatist institutions. That has been our problem for centuries. And just see who comes to Washington after the election.

I want to ask you one other thing. Some time later we can talk about it. It is a division within the Democratic Party. The urban voters of this party for centuries have been Catholic, and the people who they have got into office have not been, and have fought that separatist tradition. They see these other schools as really deplorable. Look at who we appoint Commissioner of Education. I ask if any President has ever appointed a Commissioner of Education who is in any way sympathetic, who does not consider the Catholic schools an embarrassment to the Republic. They do. I know who they are. I know where they came from. They think it is inferior education and probably inferior people and certainly subversive principles, and it is acted out year after year to the point of, in my mind, of disgust.

Now, sir, on the question of the higher education and BEOG's, I wrote the Presidential message to the Congress in 1970 which proposed the basic opportunities grant program. Senator Packwood and I are not opponents of aid to these things. We are proponents. But we come now to a later matter. The BEOG's system has been an effective one, we think, but God knows, it has been a complex one. The complexity derives from its fundamental theory, which is that some will be eligible and others will not be, and if you are going to say some persons will get public funds and other persons will not, you are into the question of making fair administrative distinctions, and they can be painful and endlessly difficult.

Now, it would be the intention of a bureaucracy which likes regulation. Regulation means jobs. It means power. It means office power, corner windows. It means assistant secretaries. It might even mean a Department of Education. That would treble the number of assistant secretaries. That is right, a Department, the normal goal of a bureaucracy. It can't help itself. No one is to blame. But BEOG was meant to help the poor, and to do so there is an inevitable welfare principle that requires all that supervision.

Is it really a good argument if we are going to a general system of assistance to higher education, is it really a good idea to go the route of more forms, more reviews, more administrators, more lawyers, the citizen more and more having to make his case and establish his needfulness in the face of a Government which can grant or withhold? Haven't we got enough of that in this country?

Mr. WARDEN. We think it would be a good idea to expand the BEOG's program eligibility to include some higher income people who are not now served by that program. We do believe that program provides the kind of assistance that is very meaningful to the families that now receive it. We think that it can be targeted based on need. We think that need has grown and that the targets should be expanded. I don't think people are interested in increasing bureaucracy in this process. We are not. We are trying to simplify the process for the students involved.

Senator MOYNIHAN. Of course you are. You don't——

Mr. WARDEN. We are trying very hard.

Senator MOYNIHAN. Once you commit yourself to a means test of providing support for education you commit yourself to more——

Mr. WARDEN. The BEOG program isn't to be the end-all of this process. We will also have some additional proposals to make in terms of loans and other programs which address the liquidity problem faced by higher income people.

Senator MOYNIHAN. Clear your mind of cant. When you decide you are going to have a means tested program, you have decided you will have an ever-increasing administration.

Senator PACKWOOD. I look at these 250 pages of recommendations for improvement, 250 pages, of which 25 are of regulation when the improvements come.

Senator MOYNIHAN. I thank you. I hope, Mr. Warden—you must want to say something—I didn't mean to be as heated as I became. I am sick to death of the Government lying to us, and my party lying, but here is our President in those last gasping days for votes, committed himself, he made a pledge, like we all made pledges, and once again the elites of the Democratic Party are opposing the proposals because after all it is a promise to an unworthy objective.

I tell you, sir, deep in the bone and marrow of your Department is a fear and a hatred of these other schools and it is unworthy of a plural democracy.

Mr. WARDEN. Senator, I would like to say in the leadership of the Department that is not true. I don't think that we are trying to break commitments or anything like that. When I say we are now working on a reauthorization program which we hope will improve the Federal programs of assistance to higher education and elementary and secondary education, public and nonpublic, I mean it. I am not part of any lie.

Senator MOYNIHAN. No, sir, you are not, and you do mean it, but it won't happen.

Mr. Chairman, I have spoken enough. I thank you.

Senator PACKWOOD. We will be delighted to have you back on another occasion.

Mr. WARDEN. Thank you very much.

[The prepared statement of Mr. Warden follows:]

STATEMENT BY DICK WARDEN, ASSISTANT SECRETARY FOR LEGISLATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. Chairman, it is a pleasure to be here today to share with you our views on proposals which would provide tax credits for educational expenses.

We agree with the Treasury Department that proposals for education tax credits or allowances should be considered by the Congress in the context of direct education assistance programs. The presence or absence of education tax credit measures obviously affects Federal educational policy, not just tax policy.

We recognize the financial pressures facing middle income families, especially families with children in college. But we believe that education tax credits are not the answer from either an education or a tax standpoint.

It is true that college costs are rising and many families must still make hard choices to finance college educations for their children. In some cases, meeting these financial demands may even result in a reduction of the family's standard of living or require the family to borrow. A tax credit does not answer this need. We believe it is possible to deal with the problem of cash liquidity more equitably through combinations of grant and loan programs which distribute the assistance according to the severity of a particular family's need.

It is in this context that HEW is currently formulating proposals which will provide more assistance to middle income families and students through grant, loan and work programs. I will discuss some of the options under consideration later in my testimony.

At the elementary and secondary level, the Federal government does provide assistance to children attending private schools by enabling those students to participate in Federal education programs. We are endeavoring to increase the access of eligible private school children to Federally financed or subsidized educational services.

I would like now to turn to a discussion of the reasons for our opposition to tuition tax credits as they would relate to higher education, and elementary and secondary education.

TAX CREDITS GENERALLY

Tax credits provide the fewest benefits to those who need them the most.

Tuition tax credit proposals are generally unrelated to student need, family income, or the varying cost of attending different types of educational institutions. Most postsecondary students, even those attending low-tuition public institutions, incur sufficient expenses to be eligible for the maximum credit under most proposals.

Clearly, a tuition tax credit program, especially a nonrefundable credit, would not target funds to those who need assistance the most. In fact, as the *Washington Post* said in a December 14 editorial:

> * * * the credit does the *least* good for the people who need it most: students from poor families, who are trying to work their way through school with the help of scholarships and loans, and whose income is so low that they pay no tax on it. [Emphasis added.]

In addition, under many education tax credit proposals a highly paid professional sending his or her child to a low-tuition community college would get as large a benefit as an average wage earner sending the child to an expensive private college with no other assistance. A family with an income so low that it pays no tax might receive no aid at all under nonrefundable tax credit proposals. Moreover, a refundable tax credit would give the wealthy the same amount as the very poor. The "solution" proposed by tax credit legislation badly matches the problem.

Tax credit proposals would further fragment Federal education policy.

Further dispersal of Federal education programs is not desirable. Enactment of a tuition tax credit would place responsibility for administration of a major educational assistance program in the Treasury Department, whose primary concern is with the economic, not the educational, well being of our nation.

Tax credits are expensive.

Tuition tax credits are very costly in terms of their effect on revenues, while not necessarily improving the education a student receives. For example, the Treasury Department estimates that a postsecondary nonrefundable $250 tax credit would cost $1.2 billion in lost revenues. The Congressional Budget Office report, "Federal Aid to Postsecondary Education: Tax Allowances and Alternative Subsidies," estimates that in fiscal 1978:

A postsecondary $200 credit/$1000 deduction would cost $1.9 billion; and

A tax deferral plan permitting postponement of $1,500 of taxes annually per student would cost $8.8 billion.

Additionally, CRS reports that S. 2142 would cost $5.6 billion in its first year, with approximately $1.1 billion of that amount going for elementary and secondary school students.

These estimates would undoubtedly increase over time. At the elementary-secondary levels, for example, tax credits would encourage parents to send their children to private schools and provide the incentive to those schools to raise their costs. Both of these factors could cause the cost of private education to increase. There would also be pressure to increase the size of the credit as institutional tuition, fees and other related costs increased.

Tax credits could make other education funds more scarce.

Since tuition tax credits would represent a substantial revenue loss to the Treasury for education-related expenses, they could result in reductions in direct funding of existing (or new) Federal education programs. At the postsecondary level, the focus in existing programs on aid to the neediest students could diminish.

Tax credits would add to the administrative burden of, and increase paperwork, by Institutions, the IRS and the taxpayer.

An education tax credit would present new difficulties for both the taxpayer and the Internal Revenue Service. A new mechanism would be needed in the tax structure to determine taxpayer eligibility, instiutional eligibility, the proper amount of the credit, and the length of time a taxpayer may continue to claim the credit. All of these additional procedures run counter to efforts to simplify the tax system.

POSTSECONDARY TAX CREDITS

Tax credits would probably have little effect on postsecondary choice.

At the postsecondary level, the amounts of the tuition tax credits under consideration (generally $250 to $500) would provide only minimal help for families that may face college costs of several thousand dollars. For many people, such a credit would not affect either the decision of whether to go to college, or the type of institutions to attend. In fact for a family which invests the same amount of money in higher education regardless of the credit (as, indeed, many families will do), the credit becomes general middle income relief for some parents. If Congress decides that the burden on middle income taxpayers is so great that they require some form of general relief, we contend that the tuition tax credit is an improper vehicle for such relief since it applies only to families with children in college (or, under some proposals, in private elementary or secondary schools, as well).

It is generally believed that the cost of sending a student to college has increased dramatically in relation to the rise in family income. But the data do not clearly confirm that belief. We believe that direct student aid programs, related as they are to need, are a much more effective and appropriate way to aid families whose income has not kept pace with rising college costs.

Additionally, an increasing number of middle income families have benefited from the rapidly expanding federal student aid programs. For example, from 1967–1976, total loan funds available under the Guaranteed Student Loan Program—the major source of assistance for middle income families—rose by 433%. Also, in the Education Amendments of 1976, the Congress provided greater access to the Guaranteed Student Loan Program for middle-income students by raising to $25,000 the adjusted family income level at which students are automatically eligible for the federal interest subsidy while in school.

ELEMETARY-SECONDARY TAX CREDITS

Elementary-secondary tax credits could weaken public education.

An elementary-secondary tuition tax credit could undermine the principle of public education in this country. It might encourage relatively more affluent families to enroll their children in private schools, leaving the public schools for the poor. While a $250 (or even a $500) tax credit is generally a relatively low percent of the cost of postsecondary education, it is often a substantial portion of the cost of a private elementary or secondary school. Hence, parents who might otherwise have kept their children in public school might be more likely to place their children in private schools. This could accelerate the enrollment decline already underway in our public schools.

Tax credits might dry up local and state money for education.

If more middle income parents were to enroll their children in private schools, the ramifications for financing public education at the elementary and secondary levels could be severe. The number of families with children in school is decreasing anyway. A further decrease in public school attendance could only make raising education funds through bond issues or taxes even more difficult.

Parents and families who use the public schools would receive little or no benefit from the credit.

Parents with children in public schools would not benefit from an elementary-secondary tax credit. In fact, their taxes would constitute a large percentage of the tax credit money going to parents with children in private schools.

TAX CREDIT ALTERNATIVES

Mr. Chairman, we are considering a number of alternatives to the tax credit to provide relief to middle income families who face problems with respect to higher education expenses.

While we believe that tax credits should be rejected as a solution to this problem, the Administration is concerned about the cost of higher education and the possibility that students may not be able to obtain advanced education because they or their families cannot bear the short-term financial burden of a postsecondary education.

It is our intention to recommend further aid to students from middle income families through student assistance programs. We anticipate that some of these changes may be made administratively and, therefore, quickly. Some will require changes in the regulations currently governing the operation of the Department's student financial aid programs. And some might require legislative action by Congress.

Under current HEW-administered programs, Federal student financial aid is based on need. Need is determined by subtracting the cost of attending an institution from a family's ability to pay for that cost. Currently students from different economic backgrounds participate at different rates in the several grant, workstudy, and loan programs.

In fiscal 1977, HEW student assistance programs provided $2.3 billion in direct aid to students. In that same year, the Federal Government as a whole provided about $8.5 billion in student aid in the form of either direct spending programs and tax expenditures and more than 38% of the students benefiting from this aid were from families with adjusted gross incomes of over $20,000.

As a part of preparing our recommendations for the reauthorization of the higher education student assistance authorities, HEW is engaged in an exhaustive review of the entire Federal effort in postsecondary education. The Administration is sensitive to the financial strain on middle income families caused in part by the rising cost of postsecondary education and is serious about taking prompt and thoughtful action to ease this strain. We are analyzing a wide variety of modifications in current student assistance programs. Included in this review is an analysis of how we may be able to target more effectively some of our existing student assistance programs not only on low and moderate income students, but also on students from middle income families who need assistance.

Let me briefly outline some of the types of changes that we are considering. We recognize that these changes would entail additional costs.

The Basic Grants Program now provides the cornerstone of Federal aid to low and moderate income students. We are considering expanding the program to provide grant aid to students further up the income scale by reducing the percent of "discretionary income" a family is expected to contribute towards higher education costs or increasing the size of the maximum award.

As I noted earlier, for many middle and upper-middle income families, the main financial problem is liquidity or cash flow. Here, where the issue is not the ability to pay over time, but difficulty in paying large lump-sum educational costs, a loan program may be the most responsive form of aid. With this objective in mind, the Department is reviewing several options to make loan programs more responsive to the needs of middle income families.

For example, we will be investigating ways to increase the number of middle income students eligible for subsidized Guaranteed Student Loans, as well as ways to increase the amount of capital that banks are willing to make available to these students.

In addition, we are investigating the probable impact of increased funding of the other aid programs—including the Supplemental Educational Opportunity Grant Program, the State Student Incentive Grant Program and the College Work-Study Program.

At the elementary-secondary level, the primary focus of Federal aid is to assist states in providing public education. The elementary-secondary budget increased from $2.54 billion in 1969 to $6.02 billion in fiscal 1978.

We strongly support public elementary and secondary education, but we are taking steps to assure that eligible private-school children have access to federally financed or subsidized services within the constraints imposed by the Constitution. We plan under Title I of the Elementary and Secondary Education Act, the largest Federal elementary-secondary education program, to require states to include in their plan submissions a description of their past and planned efforts to assure equitable services for private-school children.

CONCLUSION

Mr. Chairman, there are no easy answers to the financial problems facing middle income families, especially middle income families with one or more children in college. But we believe a tuition tax credit proposal would be less effective and less equitable than other alternatives. Direct and targeted programs are a much more desirable way of distributing education-based aid.

We urge you to postpone any action on the proposal pending before your Subcommittee until we have had an opportunity to fully develop our alternatives for dealing with the problem of the high cost of higher education.

Mr. Chairman, I appreciate the opportunity to have been here to present HEW's views on education tax credit measures.

Senator PACKWOOD. Our next witness will be Mr. Jack Peltason, the president of the American Council on Education.

Mr. Peltason, go right ahead.

STATEMENT OF DR. JACK W. PELTASON, PRESIDENT, AMERICAN COUNCIL ON EDUCATION

Mr. PELTASON. Senator Packwood, thank you. We have filed our statement and I will adhere to your admonition to keep my comments brief. I will also try to avoid repeating points that have perhaps been made.

We appreciate this opportunity to appear before you because the higher education community has watched with increasing interest the growing support in Congress for amendments designed to provide opportunities for middle-income families to meet the cost of higher education.

This is indeed a worthy objective, as is the objective of preserving diversity to which Senator Moynihan has spoken. Because of our concern over the middle-income families and the need to preserve the opportunities of choice, there has been a decided shift in attitude in the educational community in recent years from a position of opposition to one of neutrality, and in some cases to support for the concept of tax credits.

At the same time, there is a continuing concern within the higher education community that the tax credit may be viewed erroneously as aid to higher education rather than the taxpayers, and that if this view prevails in the Congress the funding of direct assistance to needy students and support for other educational objectives might be adversely affected, and I take comfort in hearing your comments this morning that that would not be the case.

Because of the resulting variety of attitudes on this issue, frankly I cannot make a statement this morning and claim that it represents the views of higher education as a whole. There are a variety of views within the higher education community about this subject.

The American Association of Community and Junior Colleges is supporting tax credits. The National Association of Independent Colleges and Universities gives a higher priority to student assistance strategy. The National Association of State University and Land Grant Colleges, I believe for the first time in its history, first, found the issue of such significance that it is polling its membership, the preliminary results showing approximately one third are in favor, one-third are opposed, and one-third are neutral.

And the American Association of State Colleges and Universities has taken a position of neutrality.

There is no dispute, however, within the community that there is a need to help the middle-income families send their children to school.

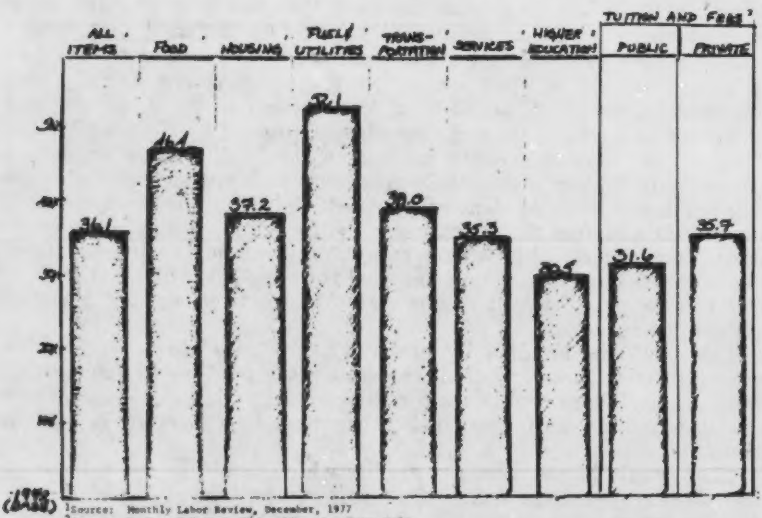
These parents find that they are frequently too high in income level to qualify for basic grants and other Federal need-based programs, but they are not well enough off to be able to afford the cost out of the family fortunes.

There is also another problem for these people who do not qualify. There is a problem that has been written about recently, the so-called sibling overlap phenomenon which has increased since World War II but is now at its peak, and apparently there are now more people having more children in school at the same time, and therefore, having to meet the multiple tuition payments. That is especially true among those of higher income.

Beyond these groups all families are finding it more difficult to meet the costs of higher education. Now the families, and I have a chart I would like to introduce in the record—it does, I think, show that by and large universities have kept costs comparable to or lower than the general cost of increase in prices. But that is not the whole story for a middle-income family, because other costs that it faces, like food, housing an energy costs, have risen dramatically and are eating into the household budget, and therefore leaving less available for education.

[The following was subsequently supplied for the record:]

PERCENT INCREASE IN PRICES FROM 1972-1976



[1]Source: Monthly Labor Review, December, 1977
[2]Source: D. Kent Halstead, Higher Education Price Index
[3]Source: Policy Analysis Service, American Council on Education based on (1) Congressional Budget Office, Postsecondary Education: The Current Federal Role and Alternative Approaches, p. 58; and (2) ACE/PAS based on Student Expenses at Postsecondary Institutions annual issues, College Scholarship and Service and U.S. Office of Education HEGIS data.

Mr. **Peltason.** As you know, payroll taxes and State and local income taxes also have undergone significant increase. So, although the price of college per se has not risen more than their incomes, the price of everything else they have to pay for has, and therefore they are finding it difficult to fund their children's college education.

There are a variety of ways that this problem may be dealt with, and one is the tuition tax credit or deduction, details of which are so familiar to this group I won't go into it.

I would just point out that one of the criticisms of this could be met, one of the concerns some people have expressed is that the tax credits might assist the higher income taxpayers who do not perhaps need the relief, and the committee could, therefore, consider some of these proposals that might phase out the reduction of credits for families, which is with income over a certain level. That would target aid more to those within the middle-income groups, and I might say in passing that in discussing this, one of the problems I think is that everybody has a different definition of who is in the middle income.

Another alternative to be considered either in place of a tax credit or perhaps in addition to it, is the tax deferral idea. The committee might wish to look closely at the plan that has been advocated for several years by Congressman Mikva. It is a deferral plan which would permit families to postpone part of their taxes at the time of their highest cost of education and spread the payment over a period of years. It in effect would be a loan system to the tax structure.

To get more directly at the concerns expressed by Senator Moynihan, a tax allowance could be designed to deliberately encourage diversity in higher education because, as you know, the cost of sending children to independent colleges, which by and large rely heavily on tuition and fees for operating costs, has risen to a point where it does place a severe burden on many families and the presidents of those institutions have been concerned for some years about the growing tuition gap between changes at their institutions and those at public institutions.

This could be handled by perhaps a graduated tax credit which would provide a larger credit to students attending higher tuition institutions. There could be a tax floor credit which would make this credit available only for tuition expenses in excess of a certain amount.

There could be sensitive tax credits which would be available only for tuition expenses in excess of a certain percentage of adjusted gross family income, somewhat the way the present law treats medical expenses.

And, finally, there is the option that has been mentioned this morning, and that is, it is not necessary to have an option in place of the tax credit, but it could be in addition to the tax credit, and that is to provide increased assistance to middle income families by using the available combination of Federal programs.

I would like to stress that that is the basic grant that has been talked about previously, but there are also other Federal programs which could be targeted and more money could be spent, such things as loans, and I would like to mention especially the college work-study program, which I think has a special attraction to everybody, but also to people in the United States. The notion of work your way through college seems to me to be about as American a thing as maybe even a tax deduction.

As Senator Pell announced last week, he will introduce legislation I am sure the members of this committee are familiar with.

I would report to you that the general feeling of the higher education community—remember, I caution I am not speaking for everybody—would give, I believe, a higher priority to that form of funding the middle income need than a tax credit.

The other concerns of the higher education community I will mention very briefly. It has been suggested by some that colleges and universities will seize upon the enactment of a tax credit as an opportunity to increase tuition and thereby turn the credits into an institutional subsidy.

I think this argument ignores two facts. Colleges and universities are extremely reluctant to increase tuition under any circumstances, and that is especially true in these days of declining enrollments.

How price sensitive higher education is can be debated, but those in charge of the institutions do believe that increase in the tuition does send students elsewhere.

Furthermore, as you know, universities and colleges are not profit-making institutions. Their responsibility is to make education viable to as many students as possible at the lowest possible cost.

But let me stress another point. Tuitions are going to increase in the coming years regardless of the passage of a tuition tax credit. As long as the cost of energy and salaries and other things go up, tuition to universities are going to increase.

There is a concern by some in the higher education communities that the State legislatures might seize upon any type of tax allowance, or for that matter any form of additional Federal aid, as an excuse for decreasing State appropriations for higher education. Public institutions and their national association, the American Association of State Colleges and Universities, remain formally committed to the continuation of low tuition.

Congress, I think, would find difficulties in controlling what other legislative bodies might do. I would call your attention to programs of which there is some concern that attention might be directed to seeing if there could be ways devised that make clear this is designed to aid the taxpayer and not to aid institutions or to be a substitute for State appropriations.

Again, I stress, as I have earlier, that we know that there are limited Federal dollars. Despite the ability of the Federal Government to print money, there does come a limit of the amount of money that can be made available to higher education, and we do not wish to stand in the way of aid for our students, we just want to make it clear that that is not all of the needs of higher education.

A related problem is to coordinate a tax credit and existing student aid programs, and some concern I think needs to be addressed to that problem.

Under the accepted needs analysis system, by which a student's need for financial aid is calculated, Senators Moynihan and Packwood are correct in saying it is complex. Over the time the grants have been in existence, I think we have been making progress; it is a pretty sophisticated system now and working fairly well, but a Federal income tax credit would increase the amount of family resources available, which would reduce, therefore, the amount of grant-in-aid a student would be eligible to receive.

In addition, since the proposed bills provide for a reduction of credit in the amount of scholarship assistance received, most lower or middle income students who are recipients of Federal, State or private scholarship would receive little help from a tax credit. The part-time student problem—this again is a difficult problem—but we believe that increasing numbers of students are finding it to their advantage to combine work and education, and in many cases they, too, have financial need, and this is a matter, I think, of some concern.

The present bills—most of the present bills, not all of them—do not cover graduate or professional schools. Let me state that I have not done a count of how many do or how many do not, but we would favor the inclusion of graduate and professional students to be eligible for tuition tax relief on the same basis as undergraduates.

In many cases they have borrowed money and go into graduate and professional schools with debts and I think their need for help is also great.

Also, at that level many of them are independent students, perhaps with dependents and they also need help.

Most of the bills are tuition tax credit bills but the cost of going to college is more than paying the tuition. There are room and board costs. These are essential college costs recognized in other student aid programs, and it is a matter I call to your attention.

I would like to conclude with saying that we do have some concern about the involvement of a tuition tax credit bill of an additional agency and to vertification and jurisdiction in the matter relating to higher education. You are quite right in pointing out that HEW now verifies whether or not the institutions are eligible for Federal aid and does supervise the campus-based programs. Tuition tax credit might well bring the Internal Revenue Service also into looking over the shoulders of college admission officers and registrars and perhaps that could be addressed and you might wish to consider an amendment to your bill which would avoid further Federal involvement in the determination of eduactional aid.

Senator PACKWOOD. I think I could say on behalf of both Senator Moynihan and myself that while we may not place the IRS on the same scale of bureaucratic incompetence we do the Department of Health, Education, and Welfare, we have no desire to drag the agency onto the campuses supervising your accreditation, and I for one will do everything I can to avoid that.

Mr. PALTASON. Thank you. These are concerns of our educational community. We have some information which we will be glad to make available to the committee, and I will be glad to try to answer any further questions.

Senator PACKWOOD. Let me thank you for a very balanced statement and especially laying to rest this bogeyman theory that these tuition tax credits will simply be passed along willy nilly at whatever level they are granted. We can argue about the relative management abilities of public versus private education and whether or not schools are well managed, but in my experience neither public nor private schools want to raise tuition, and that is the last thing they will do. They will cut costs, they will try to find revenue anyplace else and only as a last resort, public or private, will they resort to raising tuition.

Mr. PELTASON. I agree with you, Senator. That has always been the case. It is even more the case these days, not only for the reasons I previously indicated, but don't forget 18-year-olds vote. [Laughter.]

Senator PACKWOOD. I have had many contacts from people in higher education about the bill. In general, let me ask you if you would agree with this. In general, what I sense is a fear that the educational tax credit concept might be a tradeoff for the other educational support programs, and that if there were no tradeoff they would find this program perfectly acceptable?

Mr. PELTASON. I think that fear is the central fear. I don't speak for everybody, but the apprehension is that this much money going into this one specific program might detract from other programs and other educational needs. If this could be in addition to other priority concerns, I think there would not be much opposition. There may be individuals who have public policy objections, but not as educators.

Senator **Packwood**. I have no other questions. Thank you very much.

Senator **Moynihan**. Mr. Chairman, thank you.

I might make a personal welcome to Professor Peltason, who is one of the most distinguished members of the political science community, and I think so established himself once again this morning.

Mr. **Peltason**. Thank you.

Senator **Moynihan**. Sir, I would like just to make a point for you with respect to the question of graduate schools.

Mr. **Peltason**. Right.

Senator **Moynihan**. Graduate students would be eligible under the Packwood-Moynihan bill.

Mr. **Peltason**. I understand.

Senator **Moynihan**. And maybe I might extrapolate from that detail the thing about this proposal: it is not complicated. You will not find a section where they say institutions of training for nonhuman medicine, which have variations in mean temperature of up to 45 degrees, why 57 percent of the offset from section 418 can be applied on alternate fiscal years.

If you are going to an educational institution that requires you to pay tuition, you can take credit. It is meant to be simple and, of course, it should be extended to graduate students and medical students.

Mr. Chairman, I would like to introduce for the record a recent series in the Chronicle of Higher Education on the Federal student aid programs. It has a nice title—"Are All Those Forms Necessary?"—and it says, the heading says, "If they seem ungrateful for the millions lavished on them by the Federal Government, students say it is partly because of the hassles they must go through to get the money."

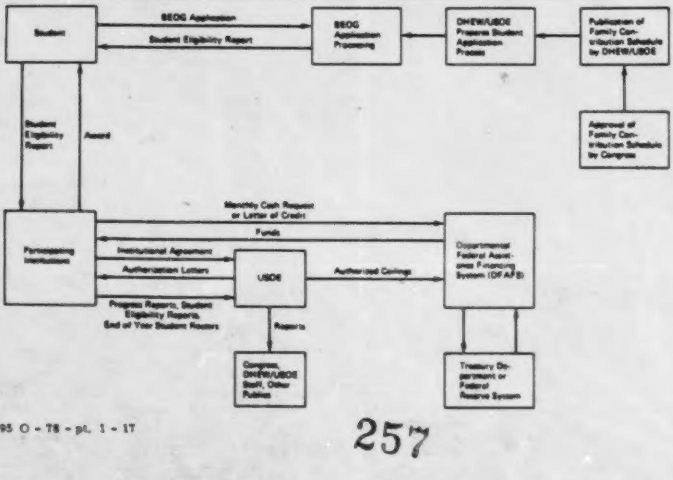
This is part of our concern.

Senator **Packwood**. Would you mind if I put those in right after five or six charts I am going to introduce showing the difficulty?

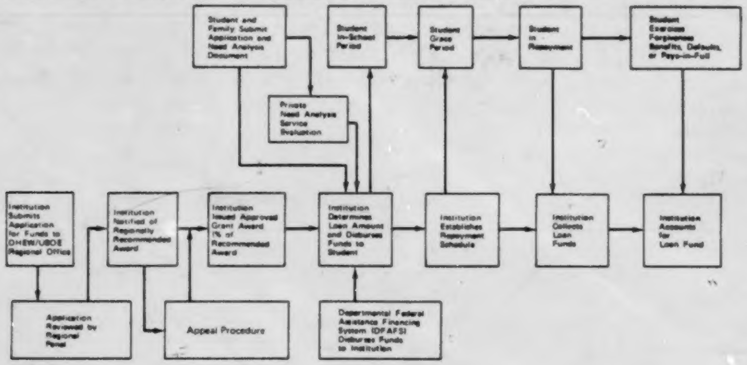
Senator **Moynihan**. Yes, sir.

[The charts and articles referred to follow. Oral testimony continues on p. 274.]

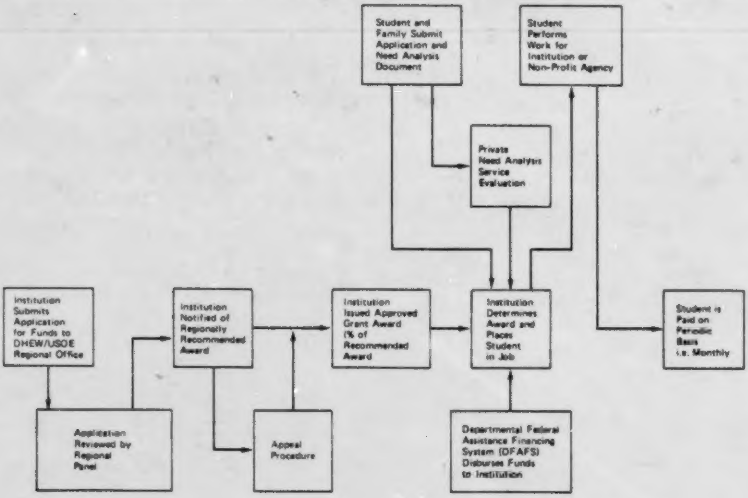
FLOW CHART OF THE BASIC EDUCATIONAL OPPORTUNITY GRANT (BEOG) PROGRAM*


Student
BEOG Application
Student Eligibility Report
BEOG Application Processing
DHEW/USOE Prepares Student Application Process
Publication of Family Contribution Schedule by DHEW/USOE
Approval of Family Contribution Schedule by Congress
Student Eligibility Report
Award
Monthly Cash Request or Letter of Credit
Funds
Participating Institutions
Institutional Agreement
Authorization Letters
USOE
Authorized Ceilings
Departmental Federal Assistance Financing System (DFAFS)
Progress Reports, Student Eligibility Reports, End of Year Student Rosters
Reports
Congress, DHEW/USOE Staff, Other Publics
Treasury Department or Federal Reserve System

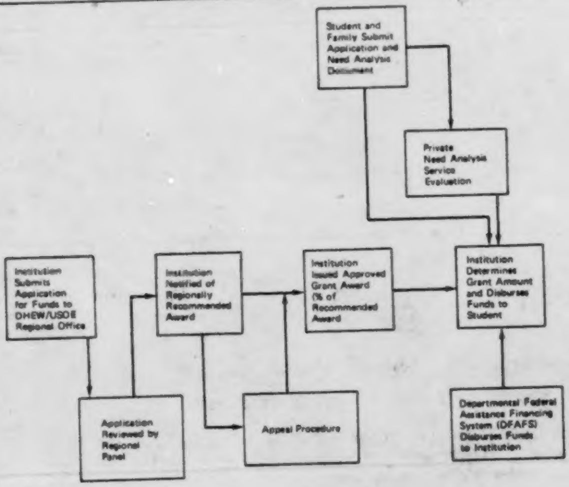
FLOW CHART OF THE NATIONAL DIRECT STUDENT LOAN (NDSL) PROGRAM


Student and Family Submit Application and Need Analysis Document
Student In-School Period
Student Grace Period
Student in Repayment
Student Exercises Forgiveness Benefits, Defaults, or Pays-in-Full
Private Need Analysis Service Evaluation
Institution Submits Application for Funds to DHEW/USOE Regional Office
Institution Notified of Regionally Recommended Award
Institution Issued Approved Grant Award (% of Recommended Award
Institution Determines Loan Amount and Disburses Funds to Student
Institution Establishes Repayment Schedule
Institution Collects Loan Funds
Institution Accounts for Loan Fund
Application Reviewed by Regional Panel
Appeal Procedure
Departmental Federal Assistance Financing System (DFAFS) Disburses Funds to Institution

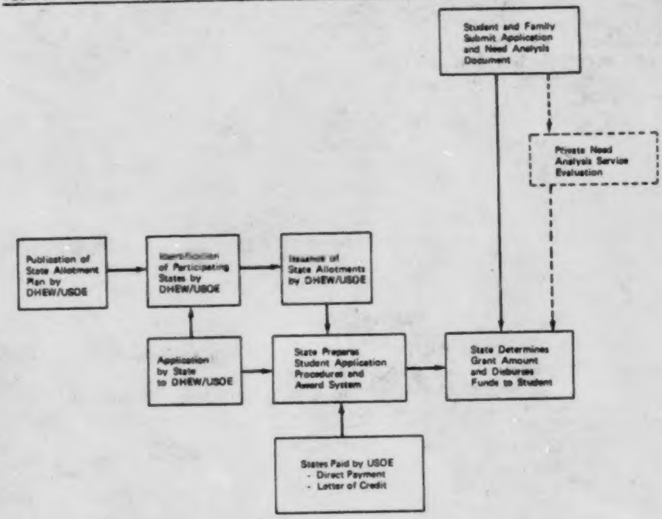
FLOW CHART OF THE COLLEGE WORK-STUDY (CW-S) PROGRAM


Student and Family Submit Application and Need Analysis Document
Student Performs Work for Institution or Non-Profit Agency
Private Need Analysis Service Evaluation
Institution Submits Application for Funds to DHEW/USOE Regional Office
Institution Notified of Regionally Recommended Award
Institution Issued Approved Grant Award (% of Recommended Award
Institution Determines Award and Places Student in Job
Student is Paid on Periodic Basis i.e. Monthly
Application Reviewed by Regional Panel
Appeal Procedure
Departmental Federal Assistance Financing System (DFAFS) Disburses Funds to Institution

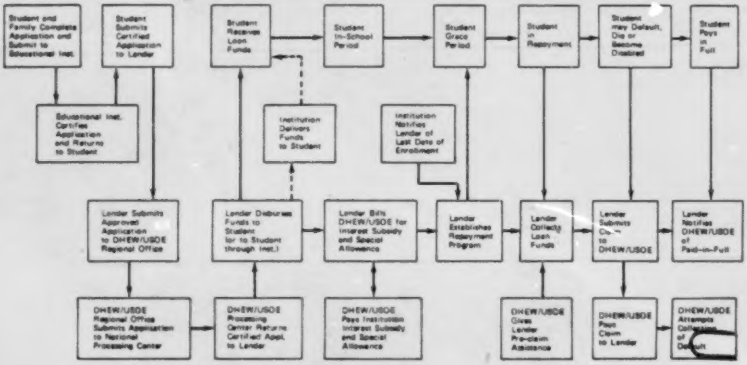
FLOW CHART OF THE SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT (SEOG) PROGRAM


Student and Family Submit Application and Need Analysis Document
Private Need Analysis Service Evaluation
Institution Submits Application for Funds to DHEW/USOE Regional Office
Institution Notified of Regionally Recommended Award
Institution Issued Approved Grant Award (% of Recommended Award
Institution Determines Grant Amount and Disburses Funds to Student
Application Reviewed by Regional Panel
Appeal Procedure
Departmental Federal Assistance Financing System (DFAFS) Disburses Funds to Institution

FLOW CHART OF THE STATE STUDENT INCENTIVE GRANT (SSIG) PROGRAM


Student and Family Submit Application and Need Analysis Document
Private Need Analysis Service Evaluation
Publication of State Allotment Plan by DHEW/USOE
Identification of Participating States by DHEW/USOE
Issuance of State Allotments by DHEW/USOE
Application by State to DHEW/USOE
State Prepares Student Application Procedures and Award System
State Determines Grant Amount and Disburses Funds to Student
States Paid by USOE
- Direct Payment
- Letter of Credit

FLOW CHART OF THE GUARANTEED STUDENT LOAN PROGRAM (FEDERALLY INSURED)


Student and Family Complete Application and Submit to Educational Inst.
Student Submits Certified Application to Lender
Educational Inst. Certifies Application and Returns to Student
Student Receives Loan Funds
Student In-School Period
Student Grace Period
Student in Repayment
Student may Default, Die or Become Disabled
Student Pays in Full
Institution Delivers Funds to Student
Institution Notifies Lender of Last Date of Enrollment
Lender Submits Approved Application to DHEW/USOE Regional Office
Lender Disburses Funds to Student (or to Student through Inst.)
Lender Bills DHEW/USOE for Interest Subsidy and Special Allowance
Lender Establishes Repayment Program
Lender Collects Loan Funds
Lender Submits Claim to DHEW/USOE
Lender Notifies DHEW/USOE of Paid-in-Full
DHEW/USOE Regional Office Submits Application to National Processing Center
DHEW/USOE Processing Center Returns Certified Appl. to Lender
DHEW/USOE Pays Institution Interest Subsidy and Special Allowance
DHEW/USOE Gives Lender Pre-claim Assistance
DHEW/USOE Pays Claim to Lender
DHEW/USOE Attempts Collection of Default

[From the Chronicle of Higher Education, Oct. 3, 1977]

ARE ALL THOSE FORMS NECESSARY?

If they seem ungrateful for the millions lavished on them by the federal government, students say, it is partly because of the hassles they must go through to get the money

(By Anne C. Roark)

A few months from now, a 28-year-old honors student in history will be graduating from an Ivy League university. He expects to be faced with an enviable problem: Should he begin law school at a prestigious university or take a job as a reporter on an equally prestigious newspaper?

Life has not always been so pleasant for him.

In the seven years since he got his high school diploma, he has had to drop out of college several times; he simply ran out of money. If he had not received nearly $20,000 in federal grants and loans, he readily acknowledges, he would probably be today exactly where he was 10 years ago: jobless in a New York City slum.

Even so, he says, he does not feel especially grateful to the government for its help in financing his education.

In fact, as he sees it, the recipients of such aid can spend a good part of their college career feeling bitter about all the hassles they face—the long lines at the financial-aid office, the seemingly endless, complicated forms they must complete, the distrust and superiority shown by fellow students and aid officials.

WHAT POLITICIANS SAY

Although he won't quite say he feels the government *owed* him the aid, he does admit that he had always assumed it would be forthcoming.

Like many of his peers, he has come to believe what politicians have been telling him for years: That no qualified student who wants to go to college should be barred by lack of money.

Indeed, he has been hearing that principle all his life. In 1944, Congress authorized the GI Bill to provide educational benefits for veterans returning from World War II. By 1958, when many of the Ivy League student's younger classmates were born, the government had launched, in the trail of Sputnik, a program of loans for needy students. By the 1960's, hundreds of thousands of students were receiving outright grants financed by the federal and state governments.

Although students now may take such assistance for granted, many of their parents know what dramatic changes the federal programs have wrought.

"My wife always said we never had much of a chance," recalls a 70-year-old retired janitor who now drives a taxi in Washington. "We certainly had no education.

"But, my kids" he says, beaming: "You should see my kids. My son, he's a surgeon—or he's going to be one very soon. And my daughter, she graduated several years ago from Duke law school and now she works on Capital Hill.

"Sure, it was the federal government that did it for them," he says. "I never made enough money to give them that kind of chance. . . . My kids, they don't realize how lucky they are."

While the costs of a college education have soared in the past 10 years, federal student aid has grown even faster. According to a report by the Congressional Budget Office this year, charges at public colleges rose 67 per cent from academic 1967–68 to academic 1975–76. At private colleges, they went up 73 per cent. Yet federal appropriations for student aid during that same period rose 252 per cent per full-time-equivalent student.

Much of the increase can be attributed to the Basic Educational Opportunity Grants program, created by the Higher Education Amendments of 1972 to give eligible college students $1,400 a year, or half the cost of attending the institution of their choice, whichever was the lesser sum.

Since it began in fiscal 1973, the program has grown from a $122,000 project, serving fewer than 176,000 students, to $1.5-billion. By next year nearly two million needy students can expect to receive grants ranging in size from $200 to $1,600. Over half of those students, the Office of Education estimates, will be from minority groups. Many of them would never have attended college or, at best, would have struggled through on a part-time basis.

THREE MAJOR PROGRAMS

Today some 3,000 colleges, universities, vocational institutions, and proprietary schools administer three other fast-growing, need-based federal programs. Each focuses on a slightly different constituency; together they meet a substantial portion of many students' financial needs:

The Supplemental Opportunity Grant program allows particularly needy students to attend relatively expensive institutions. Its cost has grown from $58-million in fiscal 1966 to a more than $250-million. In fiscal 1976 it served 447,000 students.

The College Work-Study program pays wages to students, from both low and middle-income backgrounds, who work part-time on their campuses—or off-campus in public or nonprofit organizations. In fiscal 1965 it provided over $55.7-million for 115,000 students. By fiscal 1976 it had grown to $390-million and 973,000 students.

The National Direct Student Loan program (formerly the National *Defense* Loan program) provides low-interest loans to students from low and middle-income families. It has grown tenfold—from a $31-million program in 1959, serving nearly 25,000 students, to nearly $332-million and 799,000 students in fiscal 1976.

In addition, in fiscal 1976 the federal government poured over $4-billion into education benefits for veterans under the GI Bill. Another $1.5-billion in education benefits was paid to students whose families qualified for Social Security.

In spite of the growth of such programs, many students think that a remarkably large number of their high-school peers—particularly those who need it the most—never were told about them. The young person from the slums who attends an Ivy League institution, they say, is still the exception.

"Just who is going to tell the poor innercity black kid [about financial aid]?" asks a black student in Philadelphia. He himself is receiving a full combination of grants, loans, and work-study funds at Lincoln University, but he feels he is unusual in that respect.

"My high-school counselors didn't wait for me to come into their office. They sent for me because I was a good student," he says. "I suspect if I had been a poor student or even an average one, no one would have bothered to tell me about student aid. My mom certainly did't know anything about it."

Today most federal aid, some state money, and most institutional support are awarded to students by college financial-aid officers on the basis of the students' estimated need. The estimates are typically calculated from financial-aid forms filed—by the students, if they are financially independent, or by their families—with the College Scholarship Service, the student-aid arm of the College Entrance Examination Board, or its counterpart at the American College Testing Program.

Once students do find out about aid programs, they and their parents often criticize the federal and state governments and the scholarship services for producing overly complicated application procedures. The colleges, in turn, are accused of offering little help in filling out the complicated forms.

A senior at Wesleyan University, who worked in the institution's financial-aid office last summer says that even after explaining the application process to many new students, she still did not understand why there had to be so much paperwork: forms for federal programs, for state programs, for private scholarships, and for each institution to which the student applies.

Students who are lucky enough to get over the application hurdles are then faced with a confusing array of student-aid "packages"—the particular combinations of work subsidies, grants, and loans that are offered by colleges to individual students. Students say they are baffled by the rationale that aid officers use to put together the aid packages.

One such student is an 18-year-old freshman from Washington State who "desperately" wanted to attend one of three equally expensive women's colleges in the East last year. Because her family's entire income fom the year—$5,000—did not even equal the cost of room, board, and tuition at any of the institutions, she could attend college only with extensive assistance.

She received financial-aid offers from all three institutions. But for reasons she and her family never fully understood, each offer was substantially different from the other two.

The first college said she was a "full need" candidate—meaning that she qualified for the institution's largest aid package. To finance her freshman year, she was offered $3,200 worth of grants from federal and institutional sources and $1,000 in education loans. The rest—nearly $800, plus spending money—would have to be earned in part-time jobs, after class and during the summer.

'NO NEED' OR 'FULL NEED'

The second college also told the student that she had "full need." It, however, offered her only a $2,100 grant. If she could not find an outside scholarship or money from some other source, she would have to borrow nearly $2,000 and earn a much as $900 on weekends and during the summer.

The third college—her first choice—sent her a letter saying she had "no need."

"I wrote the financial-aid office and asked why they had told me I had no need," she says. "It was pretty obvious that I did. The financial-aid director told me it was a mistake. They had sent me the wrong form letter. Actually, they knew I had the need. But they said they couldn't even come close to meeting it.

"The only alternative was for me to take out lots of loans. They said it would be 'irresponsible and injudicious' of them to allow me to borrow an awful lot.

"Maybe it would have been. Maybe I would have decided the same thing if we had discussed it. But they didn't even ask me."

The college officials who make the aid offers admit they usually don't have time to explain to students why they divide the funds the way they do. While the programs have grown spectacularly, financial-aid officers say, they are still not large enough to meet all of the needs of all the students.

For upperclassmen, many students contend, the situation grows worse, not better. After the freshman year, they say, their aid packages were unexpectedly reduced.

LESS AID EACH YEAR

"When you enter as a freshman, you are offered an aid package which you assume will continue during your four years. No one ever bothers to tell you that you will get less and less scholarship each year," says one sophomore.

Her institution argues that upperclassmen are better able than entering students to get summer jobs and assume responsibilities of larger loans. She, however, believes the college uses the large freshman grants to "recruit naïve students."

For most recipients of financial aid, budgets are tight. Many, in fact, say that the college aid officers base their awards on such restrictive budgets that students must do without necessities, including adequate clothing and medical care.

"Some students get into real jams, and no one seems to be able to do anything about it," says a black senior who, since his freshman year, has been actively lobbying through the National Student Association for increased student assistance. "For example, I've met a lot of students who can't find summer jobs. But the fact that there are no jobs doesn't seem to matter to the financial-aid officers. [Students] have to come up with $600 or $700 or $800 every summer, any way. If they don't, they'll go without eating or have to drop out of school."

Undergraduate students can borrow up to $2,500 during their freshman and sophomore years and $5,000 in their junior and senior years from the National Direct Student Loan program. They can also get up to $7,500 during their undergraduate years in state and federal government-backed loans through private lenders and some universities.

"Some students," says the black student lobbyist, "don't even realize they have accepted loans from the institutions.

"I have loan from a bank. In fact, I've got a lot of loans built up over the years. But do you know, even as savvy as I am about this business—or maybe because I'm pretty savvy—I've never added them all up. It'd probably scare me to death, if I knew what I owed. I guess I should feel privileged. It's a real white, middle-class thing to be in debt, you know. Most banks won't even give black people the time of day."

"I went through all the banks in Greeley,' a Chicano student at the University of Northern Colorado told a student advisory committee set up by the College Scholarship Service to investigate current problems in the student-aid programs. "I didn't get anywhere, because you have to have an account. That's a laugh. If I had an account, I wouldn't need that loan anyway, would I?"

Many middle-class families are also unhappy. They say they can't afford to pay the full costs of a college education, but that loans are the only aid their offspring can get. They resent the fact that their children will be forced to saddle themselves with what they consider frighteningly heavy debts.

Until recent years, many mid-level family incomes kept pace with the rising costs of a college education, according to a report this year from the Congressional Budget Office. But since academic 1974–75, the budget office says, that's no longer been true.

In that year (the most recent for which such data are available), the median income of families with dependents aged 18 to 24 rose only 5 per cent, while college-going costs continued their "steep climb," the Congressional analysis shows. At public universities the "climb" was 9 per cent, and at private institutions, 18 per cent.

Many parents who have conscientiously saved for their offspring's college expenses do not find themselves any better off than the families that have not saved. Savers often find that when the financial-aid office scrutinizes their bank balances, their children end up qualifying for less assistance than do those from families with new clothes and vacation snapshots to show for their earnings.

LYING ON APPLICATIONS

One way students fight back, evidently, is by lying on their applications for aid. The College Scholarship Service advisory committee concluded in its 1976 report on the status of the federal-aid programs: "Some students felt compelled to lie on forms in order to obtain equal treatment."

Some parents also fight the system by declaring their children financially independent. A student who lives away from home can use his own income, not his parents', as the basis for seeking financial aid. Although the families lose a federal income-tax deduction in the process, the student may gain federal assistance for which he would not otherwise qualify.

The problem of the independent student has become perhaps the most serious concern facing Congress, financial-aid officers, and the students themselves—now that nearly half of all college students say they are financially independent.

Because of the potential for abuse, students whose families honestly can't or won't pay for their educations are often faced with a barrage of cumbersome and sometimes humiliating procedures to verify that they are independent. The standard methods for assessing an independent student's ability to contribute to the costs of a college education are often grossly unfair, some students say. For example:

According to data from the Bureau of the Census and the National Center for Education Statistics, fewer than half of all college students in 1975 were in the traditional age bracket of 18 to 21 years. About 11 per cent were 35 or older. Most educators agree the percentage of older students is still growing.

Hence needy independent students often have dependents of their own. Yet, if they own even modest assets, such as a house, rigid requirements often exclude them from the largest of the federal assistance plans, the Basic Grants program.

Independent students say they qualify for even less assistance from other federal programs and from many college and university scholarship funds.

MEDIA'S "SENSATIONAL COVERAGE"

What most incenses many students, however, is what one of them calls the "news media's sensational coverage of the bankruptcy problem" in the federally guaranteed student loan program.

Congress and the Office of Education have been working to reduce the small but growing number of students who discharge their student loans by going through bankruptcy or who simply never repay their student loans.

"There has been a lot of emphasis on the problems of fraud and abuse, but no one has tried much to understand the reasons behind it," says the 28-year-old Ivy League student.

"Sure. I've thought about getting rid of my loan debts through bankruptcy, but I wouldn't like doing it any more than I liked being on welfare most of my life.

"But I don't fault those who have to do it—who declare bankruptcy," he says. "I don't look at it as something bad in them or in the programs. I see it as something bad in our society which forces people into very difficult situations."

Despite the many problems, Congress has been reluctant to legislate sweeping changes in the programs. Education leaders in the House of Representatives and Senate say they do not have enough data to make changes with any confidence that they would improve, rather than exacerbate, the problems.

HURT LOW-INCOME STUDENTS

Some low-income students in Pennsylvania for example, complained recently that they had been hurt badly when the Pennsylvania Higher Education Assistance Agency relaxed the eligibility requirements for middle-income students who wanted to participate in the state's student-aid grant program. While the change meant more assistance for the middle-income students, it also meant fewer dollars for lower-income students.

"The simple fact is," says a student at Westchester State College, "some of the middle-income kids may be having an easier time of it, but many of my really poor friends will not be able to come back to school this year, because their aid packages have been decreased by one or two hundred dollars."

Veterans who go to college under the GI Bill say they, in particular, have been victims of government attempts to solve problems associated with the education programs.

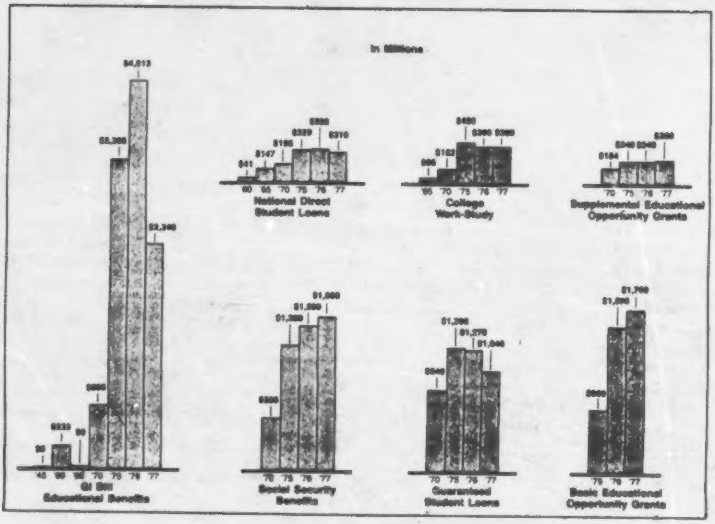
Congress and the Veterans Administration have attempted, for example, to protect ex GI's from disreputable institutions that try to take the veterans' money without giving them a quality education in return. While few quarrel with the intent, many veterans say the legislation and the VA's regulations to carry it out have unfairly discriminated against them by placing course-by-course limits on their enrollment and restricting their participation in new curricula.

"Sometimes I think it is not surprising that families and students are not grateful for the aid they get," says one Office of Education official, who asked for anonymity.

"Usually, I get furious when I hear kids are not thankful about these government-subsidized programs.

"But then I look at some of the inequities in the system, and I begin to understand why. I understand why students and their parents want to fight back—why they try to beat the system."

Federal Student Aid and How It Grew



Starting with the GI Bill in the 1940's, it has become an $11-billion-a-year industry that includes 7 major programs, dozens of smaller ones, and mountains of paperwork

Thirty years ago, when Ivan W. Parker awarded scholarships to a handful of academically talented students at the University of Michigan, he and his secretary worked alone in a condemned theater on the campus.

Today the university's $50-million student-aid operation is housed in a new office building. It resembles a small-town bank or tax-accounting office, with rows of analysts working from complicated computer print-outs. They prepare checks to pay all or part of the cost of education for nearly 13,000 financially needy students, many of whom could not attend college without the assistance.

Mr. Parker is still here, and what he has seen and done since 1947 reflects the dramatic changes that have taken place in undergraduate financial aid all over the country.

"For one thing, maybe students are not as grateful as they used to be," Mr. Parker said recently. "Many of them have stopped thinking of financial aid as an honor. They've learned to expect that, if they need support for a college education, they should get it.

"In the olden days, I actually saw the people who donated the money. And I could walk across campus and call the students by name.

"We were pretty much on our own, able to use our own good judgment. The bad thing was that the process wasn't as open as it is now.

'VOLUMES OF COMPLEX REGULATIONS'

"I often felt that some schools would give their award to Mary Brown just because her dad was on the school board. We just didn't ever hear about Thomas Jones, who was a much better student, or the student who really needed the money.

"Now an anonymous federal bureaucracy tells you what you have to do—in volumes of complex regulations. It is much more open. But there is, I guess you'd say, a price to pay for that.

"Students are not known by their names any longer. They have computer-identification numbers. I'm lucky if I see anyone I know."

These days Mr. Parker handles the university's athletic and privately endowed scholarships. Some three-dozen other people in his office concentrate their efforts on the federal government's student-assistance programs.

Undergraduate student assistance in the United States has grown from a tiny business in the 1940's to a multi-billion-dollar industry in the 1970's. Much of that increase has come from the federal government.

Only one major federal student-assistance program existed in the 1940's—the GI Bill. Now dozens of undergraduate student-aid plans are in operation, providing about $11-billion a year. The assistance takes the form of loans, grants tax exemptions, and subsidized work programs, administered by such mammoth federal bureaucracies as the Veterans Administration, the Office of Education, and the Social Security Administration.

On college campuses, the change in status of student financial-aid programs has been dramatic. The ten-fold growth in student assistance that the University of Michigan experienced in 30 years is not unusual.

In fact, for many institutions, undergraduate financial aid has become one of their single largest sources of income.

Even today, however, many faculty members and administrators admit they give little thought to how that income is handled, and by whom.

Certainly, in 1947, when Mr. Parker became the University of Michigan's first financial-aid officer, few people knew much about what he did. He had only a handful of colleagues around the country and no real office of his own.

"In the early years, financial aid—what there was of it—was handled by a large number of offices at most institutions," said James White, director of financial aid for nearly 20 years at Oberlin College.

"If students wanted loans, they went to the treasurer, who reached in his desk drawer. If they wanted to work, they went to the dean of men or women, who might have gotten them jobs.

"If they wanted scholarships, they went to the dean of admissions, or the registrar, or, maybe, the dean of the college."

Few extremely needy students ever got to college in those days, according to most officials.

"When they hired me in 1947," said Mr. Parker, "the university was looking for a high-school principal, which I was, who liked to talk—which I did. They wanted me to tell young people about scholarships—so in a sense I was a recruiter. I went around and spoke at a lot of high-school assemblies to spread the word."

The "word" at many institutions in those days was that academically talented students could compete for a limited number of merit scholarships.

The idea of honoring (some observers said "paying") students for their academic accomplishments went back to the founding of the nation's oldest colleges and universities.

According to early records, most of those scholarships were supported by private gifts. Awards were made to recruit the talented—whatever their financial status.

Only in relatively recent times did the federal government become involved in subsidizing the cost of students' education. Even then, however, the support did not necessarily go to the students who needed it.

Those who were assisted were ones whose education could contribute to pressing "national goals," according to a 1976 study, *Congress and the Courts* by Lawrence E. Gladieux, director of the Washington office of the College Entrance Examination Board and Thomas R. Wolanin, staff members of the House Subcommittee on Select Education.

WORK-STUDY STARTED IN 1930'S

As the national goals changed, the study pointed out, so did the federal government's student-aid policies.

Between the Civil War and World War II, for example, most federal support was concentrated in such areas as international exchange and vocational rehabilitation.

In the 1930's, the government added a work-study program as a way for the country to maintain a college-educated population despite the Great Depression.

During World War II, a federal student-loan program was established to encourage young persons to enter professions that had manpower shortages.

It was not until 1944—only three years before Ivan Parker arrived at Michigan—that financing a college education for large numbers of students became a major concern of the federal government.

When Congress passed the Servicemen's Readjustment Act of 1944, which created the GI Bill of Rights, many politicians argued that it was in the "national good" to provide special educational benefits for war veterans. Many, the argument ran, had had their college educations interrupted and needed "special assistance' 'to become fully productive citizens.

ERA OF $50 SCHOLARSHIPS

With the advent of the GI Bill and a number of other national student-assistance programs in the 1940's, colleges and universities began to pay more attention to their financial-aid services. Separate scholarship divisions were established and financial-aid officers, usually part-time, were designated.

Among the programs that Mr. Parker administered at Michigan was an annual $50 regents-alumni scholarship, which he used to recruit high-school students around the state.

By 1955, his office was also overseeing a national, privately financed program, the National Merit Scholarship. Underwritten by the Ford Foundation and sponsored by corporations and universities, the Merit Scholars program has continued to offer national competitive scholarships for undergraduate students for more than 20 years.

In the mid-1950's, however, the limitations of merit scholarships and the veterans' entitlement program were becoming increasingly evident to many aid officers.

Mr. Parker remembers describing to his colleagues and the board of regents the effect, around 1955, of the $50 merit awards:

"We're giving some scholarships to people who don't need them. To other people who need a lot of money, we're giving too little—and, as a result, they can't come."

By the late 1950's, Michigan, like many other institutions, began to change its student-aid policies.

"There was still a scholarship for each high school in the state," said Mr. Parker. "But only some were set at $50. Others were set at the cost of tuition, some were at more than tuition, some at double tuition.

"It meant," he said, "that the quality student would at least get a $50 bill, even if his dad was president of the bank. But if the son of the bank janitor was also good, he might get enough money to enable him to do some part-time work, and be able to attend college."

Despite the individual efforts of institutions, it was not until after the Soviet Union launched the first man-made satellite, Sputnik, in 1957 that the U.S. government embarked on a broad program of financial aid for college students. The intent was to increase the pool of talented youths for the nation's universities, which politicians were afraid had fallen behind Russia's.

At the time, federal student-assistance programs consisted of the Korean War extension of the GI Bill and graduate training and fellowships for a limited number of students in specialized disciplines.

The new policy took shape in the form of low-interest student loans, enacted by the National Defense Education Act of 1958. The law and its name clearly stated the "national goals" of the federal support:

"The Congress hereby finds and declares that the security of the nation requires the fullest development of the mental resources and technical skills of young men and women."

FEAR OF A 'FREE RIDE'

It was also what "sold" the loan program to Congressmen and Senators who feared that the loans, particularly with their special cancellation provisions for future teachers, would be little more than a "free ride" for students

(Only much later, after the idea of aiding students had become firmly entrenched in the American way of life, was the name of the loan program changed to National *Direct* Student Loans.)

To administer the new loan program, colleges and universities all over the country began setting up separate financial-aid offices, bringing together under one roof—separate from other offices on their campuses—the various state, institutional, and federal programs.

How far the federal government would take the notion of need-based student assistance became a major political issue in Washington and on the campuses through the late 1950's and early 1960's.

Ironically, much of the pressure for increased federal assistance came from outside the campuses.

"Partly as a result of the success of the GI Bill, the attitudes of American society toward postsecondary education began to change," said the recent report of an H.E.W. task force. "The desire for postsecondary education rose among middle- and lower-income families, where previously it would have been considered unrealistic."

The enrollment boom that hit colleges and universities in the 1960's temporarily suspended the student-aid arguments in Washington and the state capitals. Lawmakers faced the more pressing problem of financing campus building projects and developing new institutions, particularly community colleges.

ARGUMENT FOR STUDENT CHOICE

During the early years of the Kennedy Administration, private colleges pressed the argument that students should have not only "access" to a college education, but also "choice" among institutions—whatever their cost. Increased federal assistance for students, they felt, could bring that about.

Associations representing state colleges and universities lobbied against federal support for students.

"Our early reservations came from fear of too much intervention, too much paperwork," Mr. Parker recalled. "Personally, I thought the more dollars I could find, the better it would be for students."

The state institutions' arguments were supported by conservative Congressmen, who continued to object to giving even the neediest students a free ride.

Complicating the issue of federal support for education was a long-running debate over the constitutionality—and desirability—of extending direct government support to church-related schools and colleges.

The result was that legislative proposals for need-based, non-repayable student grants were rejected in the early 1960's, but by 1964, the federal government had committed itself to new national goals—the "Great Society" and its "War on Poverty." The goals included a new policy of educating all persons, poor as well as rich, and the money to pay for it.

By 1965 the government was publicly committed to a policy of "equal opportunity for all persons" with the passage of major civil-rights legislation the year before. Education was seen by many politicians as the way to provide that opportunity, and student-assistance programs as the means to pay for it.

DRAMATIC SHIFT IN 1965

A College Work-Study program was enacted as part of President Lyndon B. Johnson's Economic Opportunity Act of 1964, guaranteeing more jobs for needy college students.

The most dramatic shift in federal policy came with the Higher Education Act of 1965, which authorized the first federal program of non-repayable grants of up to $1,000 to students from low-income families. Known as the Educational Opportunity Grant program, it was the predecessor of the current Supplemental Opportunity Grant program.

In response to the need for assistance for middle-income families, the act also created the Guaranteed Student Loan program. Under its provisions, the federal government began to insure loans made by banks and other lending agencies, thus encouraging them to lend to needy students who could not get the credit or collateral normally needs to secure commercial loans.

A variety of other programs to aid students also began to appear. In 1965 workmen's-compensation programs, such as the Social Security Benefit plan, extended monthly benefits to the unmarried 18- to 21-year-old children of deceased, disabled, or retired workers.

$3-BILLION INCREASE

As a result of all these new programs, by 1965 the federal government was spending $3.5-billion for student assistance—nearly $3-billion more than 10 years before.

As greater strain was placed on the federal budget in the 1970's, pressure grew for federal and state governments to increase student assistance.

Many educators said they were committed to the "package" approach to financing students' education. The financial-aid packages, which provided a combination of grants, loans, and work for needy students, provided the flexibility to reach a large number of students with differing financial needs.

Therefore, with the passage of the Education Amendments of 1972, which made major revisions in the Higher Education Act of 1965, new federal programs were added to the old ones. For example:

A new grant program, called Based Educational Opportunity Grants, was created to insure that eligible college students would at least have a basic sum of money to attend college.

A Supplemental Opportunity Grants program was created to succeed the Educational Opportunity Grant program for needy students who required additional assistance—for example, to attend particularly expensive institutions.

A new State Student Incentive Grant program was also established in the 1972 Amendments to match funds appropriated by the states for their own scholarship programs.

STATE AID TO PRIVATE COLLEGES

While the states had traditionally supported educational programs at state-run institutions, the incentive-grant program helped establish them as a major source of student financial assistance to be used at private and public institutions. The state grants provided nearly $650-million in grans last year to students.

The state programs tried to fill a role that, many aid officers believe, the federal, government have avoided: giving students enough money to attend the colleges of their choice.

Nonetheless, many financial-aid officers have charged that the state student-assistance programs are less than equitable for many students. For example, half of all student-aid funds, according to the National Association of State Scholarship Programs, are provided by only five states: New York, Pennsylvania, Illinois, California, and New Jersey.

The allocation of federal funds, while based on strict formulas, has also led to gross inequities among institutions, aid officers say.

"Old, well-established programs with aggressive financial-aid officers consistently bring in the largest portion of the federal dollar for their students," observed one financial-aid officer. "Students in newer institutions or places with less aggressive aid officers are shortchanged."

Many students and their parents also argue that they still are not awarded enough money to keep pace with tuition increases. They also complain that the process of applying for aid is overly complex. Middle-class students feel they are overburdened with loans. Poor students find it difficult to obtain adequate loans.

Most say that efforts to improve the situtaion have been of little help.

POOR CREDIT RISKS

The Student Loan Marketing Association, for example, was created by the 1972 Amendments as a government-sponsored, privately run corporation to increase the number of student loans. While it has increased the money available for those loans, many banks and other commercial lending agencies continue to consider the neediest students poor credit risks.

Students also contend that little has been done to enforce the consumer-information provisions of the 1976 Amendments, which tried to protect students by informing them of their rights and responsibilities.

Financial-aid officers complain bitterly that their staffs are overworked and understaffed.

For each student who applies for assistance, they say, numerous and complex application forms must be processed. Each federal, state, and private program that institutions administer requires applications and lengthy reports.

Beyond the large, undergraduate federal programs, financial-aid offices must also juggle graduate-student fellowships, public-health loans, athletic scholarships, alumni donations, and foundation grants.

INCONSISTENT REGULATIONS

Not only are financial-aid officers burdened with the problems of getting the money for their students; they also are plagued with what one observer called "inconsistent" and "overly intrusive regulations" to carry out the programs.

"With each program, more students could attend college," said P. Jerome Cunningham, director of financial aid for 20 years at Wesleyan University. "Yet with each new federal program came a new set of complicated regulations.

"At first the federal government didn't tell us how to run the programs at all. Then they told us too specifically—in too much complex detail—who could get the money and how the institutions had to handle it."

Although some federal agencies have begun to simplify their requirements, they contend that many of the requirements are necessary to hold down the growing problems of fraud and abuse in these multi-billion-dollar programs.

Congress also has been concerned. One result has been major alterations in the Guaranteed Student Loan program, aimed at reducing the spiraling default rates and eliminating fraud.

Dramatic changes were also made in the GI Bill, re-authorized by Congress last year, in an attempt to cut down the abuses. The new measure required institutions to limit the enrollment of veterans in courses of study and to restrict their participation in new courses.

"The result of all these burdens for many financial-aid officers is that they have to follow formulas. Everything has to be fed in to the computer. But some of these cases the computer just can't handle," said Paulette Stallworth, one of Mr. Parker's colleagues at the University of Michigan.

FUTURE AID FORMULAS

How those student-aid formulas will be altered in the years ahead is the central question for students, institutions, and the government.

While financial-aid officers, parents, and students say they would like to see funds for the programs increased dramatically, President Carter wants to cut down spending.

Legislators, for their part, say they are reluctant to make major changes in either direction.

Despite volumes of reports, they say, few data are available to show them what effect cutting a program, or increasing it, would have on specific students in specific parts of the country.

Barring a fiscal crisis or a drastic increase in fraud in the programs, Congress will not have to face that question again until 1979, when some of the major programs will expire.

But for Mr. Parker, who has been around longer and seen more than most, the direction is clear:

"My feeling for years has been—and I still believe it—that, as the time goes on, we're going to have college without tuition—a kind of GI Bill for every college student. Costs are going up too fast, and college is too much a part of the American dream, for it to be any other way. I have little worry about this country being over-educated. And, despite their talk, I think the American people feel basically the same way."

PLAYING THE STUDENT-AID GAME

(By Anne C. Roark)

By the time the academic year is over, the student-aid officer at one private New England college will have brought in more than eight times as much federal money for his campus as will his counterpart at a virtually identical institution down the road.

According to a recent survey, the amount of money from three federal student-aid programs—College-Work Study, Nationa Direct Student Loan, and Supplemental Educational Opportunity Grants—received by four-year private colleges with similar costs and virtually identical student populations varies from nearly $500 per student to only $60 per student.

The Consortium for Financing Higher Education, which conducted the study, found similar differences among other types of colleges and universities around the country.

The reason for the inequities is clear to most financial-aid officers. The process of getting government aid and disbursing it to hundreds of thousands of students a year is a subtle and highly complex political game, particularly among those who play it well.

It involves "manipulating the system" to get the biggest possible share of the limited funds available from the federal government. To succeed, aid officials say, they need strong support from other administrators on their campuses.

While the sophistication and political clout of financial-aid officers vary widely, it is clear that even the most savvy don't get the support they say they need.

For example, at one small Southern college for women the student-aid officer also runs the career-placement office and coaches the basketball team. She works 11 hours a day and is paid less than any other administrator. With most of her time spent counseling students about their career plans and how to pay for their education, she finds she has little time left to search for the jobs they want or to apply to the federal government for the assistance they need.

In another part of the country, the director of financial aid at a state university has 30 technical assistants and a computer to process thousands of applications for federal, state, and university funds. Calling himself a "middle-management type," he considers individually only a handful of the thousands of applications for student aid—from the few students whose financial situations are so complex or unique that the computer is not programmed to handle them.

In at least one West-coast university, the student-aid officer has the unusual advantage of being armed with the title of vice-president. But, he likes to remind his fellow administrators of the importance of his office and his own achievements: how much additional money his lobbying efforts with Congress have brought to the university and what effect that money will have on the type of students who enroll and the curriculum they'll need.

NO-WIN SITUATION

"The financial-aid officer is in a no-win situation," says James White, director of financial aid at Oberlin College. "Students complain because there isn't enough money to take care of all of their needs. The business office says you're spending too much of the institution's own resources."

"We're looked upon with jaundiced eyes by most of the faculty," says Gene S. Miller, director of financial aid at Pasadena City College in California. "They see us as operating a welfare program.

"I take their concern—that I am taking money out of their pockets—as a sign I have not done a good job of educating them on what financial aid is all about."

Student-aid officials maintain that, over the past 20 years, they have done more than any other campus department to change the character of their colleges.

Since the major federal student-assistance programs began in the late 1950's, low-income and minority-group students have been able to enroll in relatively large numbers. With the new students have come dramatic changes in university housing arrangements, in social activities, and even in the curriculum.

For example:

Over the past several years, many institutions have transformed some conventional dormitories into low-cost cooperative housing arrangements in which students do their own cooking and cleaning.

Many liberal-arts colleges have expanded their traditional curricula to include vocationally oriented courses for students who demand tangible economic "payoffs" from a college education.

Many institutions have tried to meet the academic interests of growing numbers of minority-group students by establishing new programs in black studies, Chicano studies, and American Indian studies.

Today, in a period of financial uncertainty, financial-aid officers say they bring in a large part of their institutions' income.

Although the figures vary greatly by size and location of colleges and universities, the average professional in a student-aid office controls half a million dollars a year, according to estimates by the Washington office of the College Entrance Examination Board. At four-year public institutions, the average per professional is closer to a million.

Those figures do not include benefits that the officer may use in putting together a student's assistance package—benefits he does not actually control, such as Basic Educational Opportunity Grants, GI Bill funds, and Social Security payments. (A student's eligibility for those programs is determined by the federal government.)

Even considering only the funds they distribute themselves, many financial-aid offices bring in nearly as much money from the federal government as their colleges' development offices raise from private donors. At the so-called "developing colleges"—black colleges in the South and some other small private institutions—the share of income that comes from federal support is even larger.

SALARIES LOW

Yet, as they are quick to point out, student-aid officials are given far less credit—and paid far lower salaries—than their colleagues in fund-raising work.

According to the latest annual survey by the College and University Personnel Association, student-aid officers outrank only campus bookstore managers on administrative pay scales.

"We used to be at the very bottom of the heap in the national surveys," says one student-aid officer. "The fact that we are now second from the bottom is probably not so much an indication that our status has improved as that they now include bookstore managers in the surveys."

For many, however, the frustrations of the job go well beyond salaries. Says one student-air officer in California, whose view is typical:

"My governing board, most of the faculty members on this campus, and, to a certain degree, even my president, assume the federal government automatically hands out money directly to the needy students who qualify for it. They don't understand that how much the students get depends on how persuasively I demonstrate their need.

"If you were to look at my comparatively low salary and my terribly overworked, undertrained staff, you'd have to assume the college thinks I am little more than a disbursing clerk. The profession is hurt by the working conditions, certainly—but more important, it is the students who lose.

"When I try to explain to my superiors how the process works, they miss the whole point."

While the point may not be complicated, the process is.

Because there are not enough federal funds to go around, Congress and the executive branch have developed formulas to divide the money among those who need it.

For the three programs administered directly by colleges—Supplemental Opportunity Grants, College Work-Study, and National Direct Student Loans—federal funds first are allocated among the states, according to such criteria as the number of high-school graduates and the number of youths under 18 years old from improverished families.

Each state's share of the three "campus-based" programs is, in turn, distributed by regional review panels of the Office of Education among the state's public and private educational institutions, according to how much money each can prove its students need under the federal formulas.

In the final step, financial-aid officers on the individual campuses distribute the funds to eligible students according to federal guidelines and campus policies.

Although the government regulations are ostensibly designed to get the funds to the students who need them the most, federal formulas are so complex and contain so many loopholes that financial-aid officers say the money is rarely if ever, distributed equitably.

"If you understand how the system works," says P. Jerome Cunningham, director of financial aid at Wesleyan University, "you understand why students complain that they are offered substantially different aid packages by the colleges and universities to which they apply.

"It's not just how much money students actually need that decides how much they get.

"I don't like the word 'grantsmanship,' but that's precisely what it is. The people who have been around the longest and who know the most, make off with the largest share. You listen to the federal government and the regional offices, and figure out how they are going to do it—how they are going to hand out the funds—and you play the game."

One way a financial-aid officers may get more funds for his or her students is to overestimate the number who will apply for financial aid. Since the college's request will inevitably be cut back by the regional panel, the institution will still not get all that its students actually need—but it will come closer than if it had more accurately projected the number requiring assistance.

The situation can be blamed only partly on the complexity of the system, contend many student-aid officers.

Recent efforts by the Office of Education to simplify the system of distributing student-aid funds have created new problems for many colleges. Instead of requiring institutions to go through the long-complicated application process for the "campus-based" programs this year, the Office of Education will automatically give most institutions 110 per cent of what they received last year.,

THOROUGH OVERHAUL NEEDED

"The consequences of this 'simplification' process are extraordinarily serious," says R. Jerrold Gibson, director of the Office of Fiscal Services at Harvard University. Just simplifying the current allocation process, he says, assumes it is equitable in the first place, when in fact what is "sorely needed" is a "thorough overhaul" of the whole process.

Under the new system, institutions that have not gotten their fair share of federal student aid in the past will have no way to increase their funds in the future, while institutions that have previously done well will continue to hold their advantaged positions, Mr. Gibson says.

The ability to do well, according to many student-aid officers, is partly dependent on conditions as arbitrary as the geographic location of the institution.

"The legislative allocation formulas have nothing to do with where people are actually going to school," says Richard J. Ramsden, former executive director of the Consortium for Financing Higher Education. For example, he says, it is "grossly unfair" that Southern states with relatively few colleges should get virtually the same allocations as Northeastern states, where most of the country's expensive institutions are clustered.

Federal formulas, he points out, are based primarily on numbers of high-school graduates and the percentage of a state's population that is under 18. For the most part, he says, the formulas fail to allow for the fact that some states have proportionately more college students than others.

Only student-aid officers with considerable political skill—both on their campuses and in Washington—can manipulate the inequities in the system to their institutions' advantage.

INSTITUTIONAL FUNDS SUBTRACTED

According to the regulations of the three campus-based programs, a college or university must subtract from its request for federal funds the amount of money available to its students in institutional scholarships.

A politically wise student-aid officer at a well-endowed institution can increase the amount of federal funds his students will receive by persuading donors and the governing board to divert the institution's own funds from student aid to other areas.

Such efforts to beat the system obviously leave even less money for institutions that cannot compete politically for their fair share of the money.

Ironically, the students and institutions that do not compete are often the very ones with the greatest need. That is particularly true of two-year community colleges.

Even considering the lower costs of attending such colleges, their share of funds from the campus-based programs is disproportionately low, according to Lawrence E. Gladieux, director of the Washington office of the College Entrance Examination Board.

His 1976 study, *The Enigma of the Two-Year Colleges*, shows that 20 to 25 percent of all financial need is at two-year institutions. Yet they received less than 10 per cent of the 1974–75 allocations under the National Direct Student Loan program, 17 percent of those under the Supplemental Educational Opportunity Grants program, and 21 percent of those under the College Work-Study program. More recent estimates indicate the situation probably has not improved significantly. It may even have worsened.

Much of the inequity apparently results from the failure of student-aid officers at many community colleges to apply for one or more of the programs, says Mr. Gladieux. Those who do apply don't ask for as much as their students really need, he says.

Aid officers at community colleges and other low-cost institutions say they simply do not have the time or staff to study the complex regulations and forms—or to keep the records the federal government requires.

THREATENED TO SEND BACK FUNDS

"Our financial-aid office, like so many at community colleges, is relatively new," says one student aid officer who asked not to be named.

"Unlike some of my colleagues, however, I figured out, early on, how the system could work to our best advantage. Each year I told my president that I could get more money from the federal government, but only on the condition that my office be upgraded, that salaries be improved, and that I get a larger staff to handle the increased work load.

"It was not until I threatened to send back the federal funds that anyone on this campus paid any attention to us."

Her "long, hard battle just to survive" on her campus is still not won, she believes. Like many of her colleagues in California, she is still pegged as a "classified" employee—a non-professional category shared by janitors and secretaries.

Her threat to send back federal funds if she was not given an adequate staff to handle them was not only a political ploy to get her president and governing board to pay more attention to her office, she says; it also was intended to protect her with the federal government.

If her office were to be audited and found lacking in its record-keeping efforts, she says, she wanted the president's refusal to give adequate support to be "on the record."

Financial-aid officers at small proprietary institutions such as beauty-culture and business schools say they are frequently caught in a bind between the conflicting demands of their institutions and the government.

LACK RESOURCES

Carol Scoggin, director of financial aid at Twentieth Century College in Mobile, Ala., says that because her institution is small, she needs to handle the entire student-aid process, from applying for funds from the government to handing out checks to students. Yet the federal government, in an effort to cut fraud and abuse in the programs, requires her to set up a system of checks and balances in which one office administers the funds while another disburses them.

Some student-aid officers at small institutions say that their internal political battles for larger staffs and resources takes so much time that they have little left to lobby against those "unfair" requirements—or to let Washington know which programs benefit their students most.

Some worry, for example, that President Carter will ignore their arguments that phasing out the National Direct Student Loan program would badly hurt low-income students.

"While we know that eliminating the campus loan program might save money," says Ms. Miller of Pasadena City College, "we also know that such a move would cut the only source of loan capital to minority-group and low-income students who are not considered good enough 'credit risks' to qualify for loans from commercial banks."

Complaints of inequities, however, are not confined to small, financially struggling institutions.

Aid officers at high-cost institutions say they, too, have little success in lobbying for the programs that benefit their students—despite the time and money that many of them spend on such efforts.

Many are troubled by their failure to overturn the Office of Education's recent decision to wait until December to distribute the application forms for students who want to apply for the Basic Grant and campus-based aid. The later date will allow students to file only one application for most of the Office of Education's aid programs.

Many student-aid officers fear, however, that the new timetable will not give them enough time to process the applications before awards must be made in early spring. If they are late in telling students how much aid they can expect, they say, high-cost institutions will be at a disadvantage in recruiting students.

While officers of many public institutions say the delay is worthwhile because of the reduction in paperwork for students, some, at the high-cost institutions, contend the single form will be of little help to the majority of their students, whose family incomes are too high to allow them to qualify for Basic Grants, anyway.

Many—if not all—of the problems associated with federal student aid stem from the fact that there are not enough funds to go around, student-aid officers say.

"The crunch really comes not because there is anything basically wrong with the programs, but because the government is telling every needy student he has a right to get aid," says William S. Phelps, director of financial aid at Morgan State University.

As a result, student-aid officers say they must spend a great deal of time helping students juggle their limited finances. Often the financial counseling goes beyond simply helping students figure out how to pay the costs of books and tuition.

POLITICIANS AND DIPLOMATS

"We're not only politicians, we're diplomats," says a financial-aid officer at a small college, who asked for anonymity.

"With an increasing number of broken families, we get into negotiations about who is going to pay for the education—and that's sticky business.

"It used to be, in the days of Vietnam demonstrations, that we would have to help students put up bail bond. Today, student-aid recipients come in with more serious problems, and they're often desperate.

"They need money for abortions, for example. Maybe that's beyond the call of duty for the financial-aid office. But there are lots of things that come up that are not just tuition or fees or books or travel expenses.

"Students get themselves into serious boxes. And it takes money to get them out. Whatever it is, I think we have an obligation to help. Yet I know a lot of people on this campus would not agree."

Student-aid officers themselves don't always agree on what their role should be.

"It is one of the major problems of the profession," says Pasadena's Ms. Miller. "The fact is, financial aid as a profession is a new phenomenon. There are no textbooks to describe how to fill out the forms, how to divide the aid among students, how to manage a staff. Financial aid has just grown like Topsy, and in each institution it has grown in a different way."

Because of all the problems, many financial-aid officers say they plan to get out of the business.

"I sympathize with the people who do leave," says Oberlin's Mr. White. "I fell into the business like everyone else did. I had been in admissions for years, and thought I liked it—but, now that I'm here, well, I just couldn't imagine doing anything else.

"Graduation is a very important time," he adds. "To see a student from an underprivileged background graduate from a school like Oberlin—it's just wonderful. The fact that I had a little something to do with it makes me feel good. I guess it makes up for all those battles we keep losing."

WHAT CHANGES AHEAD FOR STUDENT AID?

By Anne C. Roark

Federally financed student aid has grown phenominally in the past two decades. But disenchantment is widespread, among politicians and educators, over how the nearly $12-billion a year is spent.

Virtually no one professes to know what to do about the problem—except to blame someone else.

Students complain that colleges give them too little of the right kind of aid and tie too many strings to it.

The colleges criticize the government for distributing the money inequitably, enforcing unreasonable and intrusive regulations, and requiring mountains of paperwork.

Washington bureaucarts, in turn, criticize Congress for creating over the past 20 years complex programs whose intent is unclear and which frequently operate at cross purposes. Instead of setting national policies, they say, Congress has reacted haphazardly and blindly to one financial crisis after another.

On Capitol Hill, friends of education respond by attacking bureaucrats and the colleges for not supplying adequate data on which to base new programs or redesign old ones. Congressmen also chastise students and colleges for abusing the programs. "Ingratitude," some of them call the students' attitude.

NOT UNUSUAL

Such passing of the blame for a bad situation is not unusual either in Washington or in society generally. Even so, enough people are sufficiently concerned that an overall redesign of the federal system of aiding students may be in the offing.

Some of the signs:

Last year, for the first time, the House of Representatives gave its Committee on Education and Labor the authority to study all of the federal government's education programs. They include not only the grant, loan, and work-study programs administered by the Office of Education, but also student-benefit programs operated by the Veterans Administration and the Social Security Administration.

Although the laws authorizing the different student-aid programs must still be approved by several Congressional committees, many observers feel that consolidating the so-called "oversight" jurisdiction in one committee is the first, necessary step in evaluating how the programs work together.

More than two years before the major student-aid programs must be reauthorized by Congress, the House Subcommittee on Postsecondary Education has already held lengthy hearings to ask representatives of the Administration, colleges, and students what changes should be made in federal student aid.

While those testifying admit they have offered more complaints than solutions, many feel their problems are at least being taken seriously for the first time.

Shortly after taking office this year, Joseph A. Califano, Jr., Secretary of the Department of Health, Education, and Welfare, announced that he would consolidate all of the Office of Education's student-assistance programs in one administrative unit—the Bureau of Student Financial Assistance.

While educators suspect such a reorganization will not solve many problems, some say it may be the only way to begin to simplify the programs and eliminate their inequities.

The man named to head the new student-aid bureau has set as his main goals: simplifying the student-aid process, providing the data Congress needs to make sound legislative decisions, attacking the growing default rates in the student loan programs, and reducing the amount of inaccurate and fraudulent data submitted by students applying for aid and by the institutions that hand it out.

Tempering their usual cynicism about the promises of new government officials, many educators and politicians say they are increasingly optimistic that the head of the new bureau, Leo L. Kornfeld, a former executive in a New Jersey data-processing company, may make some headway where others have failed.

"I've worked with both the Administration and Congress," says an analyst in the Congressional Budget Office. "I don't know whose fault the problems are. But I do know the weak link is a lack of data. We simply don't know what students are getting the assistance or what would happen if we altered the programs even slightly.

"I think most people on Capitol Hill—and probably many on the campuses—think Kornfeld's new organization and his goals are good. But what's most impressive about him is the way his mind works. It's unnerving to have someone come in with such fresh ideas and ask such straightforward questions about who gets the assistance and why."

A "ROUTINE" REQUEST

When he came to the Office of Education in July, one of Mr. Kornfeld's first requests was for a list of who receives the Office of Education's student-assistance programs—broken down by state and type of institution.

Instead of a simple three- or four-page answer to what he thought was a "routine" question, Mr. Kornfeld received hundreds of pages of nearly indecipherable computer printouts.

What seems to concern him most is that, despite the number of years many of the student-assistance programs have been operating, answers to the simplest questions are hard to come by: Who is receiving which kind of federal student aid? Where do the recipients live? What kind of colleges do they attend? What kinds of students benefit more than others?

Why the answers to such questions were not pursued by previous administrations is not clear. Democrats would like to blame the problems largely on Nixon Administration officials who opposed the student-aid programs.

"In some instances, the Administration tried to demonstrate that the programs shouldn't have been passed into law in the first place, and that they would never work," says William D. Ford, chairman of the House Subcommittee on Postsecondary Education.

"But we see some indications that that is going to change very rapidly," says the Michigan Democrat. "At least, Mr. Kornfeld is now asking the same kind of questions we are."

Today Mr. Kornfeld says he can get the answer to almost any question he poses. The problem, he says, is that what he considers essential information to run the programs is not routinely provided.

"When I ask a question, people scurry around as fast as they can to get me the numbers," he says. "The unfortunate thing is that if I ask the same thing again three weeks later, I may get a different set of numbers. There is no consistency."

Yet, Mr. Kornfeld contends, "those numbers are a very important way to find out what has happened out there. Numbers show trends, weaknesses. They trigger you to start looking for problems, and that leads you to start finding answers."

Without those data, he says, the effect of even the slightest change in the programs cannot be predicted.

For example, many older students and some colleges urge the Office of Education to relax the eligibility requirements for self-supporting students who want assistance from the largest of the government's aid programs, the Basic Educational Opportunity Grants.

They argue that students who live away from home and use their own income, not their parents', as a basis for seeking assistance, should qualify for more federal aid.

Yet the Office of Education has delayed new regulations for the grant program because, its officials say, they are uncertain whether the changes urged on them by students would actually benefit them, particularly if they are very poor.

"We suspect—but we don't know, because we don't have adequate data—that students from welfare families might qualify for more aid than students who declare themselves independent," says a Congressional budget analyst. "We need to know much more specifically how changes will actually affect individual students, and not just how we *think* it ought to affect them."

As a result of such uncertainties, one of Mr. Kornfeld's first priorities when he came to the bureau four months ago was to form a brand-new unit—the Quality Assurance Division—which has already begun to provide more detailed analyses of the student-aid programs.

While many college administrators fear this means the government will demand even more paperwork from them, Mr. Kornfeld contends the new data system should require even less.

In fact, Mr. Kornfeld says, within a year he intends to be "well on the way" to merging into one relatively simple form all of the reports and applications that colleges must submit to the Office of Education under its student-aid programs.

A CONSOLIDATED APPLICATION FORM

For students, the Office of Education has already consolidated into one form the applications for the Basic Educational Opportunity Grant, the Supplemental Opportunity Grant, the National Direct Student Loan, and the College Work-Study programs.

Mr. Kornfeld says he hopes to simplify things even further.

One of his ultimate goals, he says, is to develop one application form for all private, as well as public, student-assistance programs—including those administered by other federal agencies, by state governments, and by private sources.

However helpful such changes in the aid application procedures may be, college officials say a reduction in paperwork will solve only a portion of the problems.

Some say the most serious problem is the way funds are divided among states, institutions, and, ultimately, students.

Money from only one Office of Education program, the Basic Educational Opportunity Grants, is awarded strictly on the basis of students' income. Money for all the other programs is doled out first to states, then to institutions, and finally to students, following complicated formulas. The result, according to many college officials, has been gross inequitities among their institutions.

For example, say aid officials, states with large numbers of high-cost colleges tend to receive proportionately less money than states with few such institutions. Colleges with inexperienced or timid aid administrators get fewer dollars than institutions with particularly savvy aid officers.

GETTING 'THE MESSAGE ACROSS'

Students say the poorest among them, who need assistance the most, are the least likely to find out about it.

Some of those problems, Mr. Kornfeld believes, will be solved by his office.

The Bureau of Student Financial Assistance, he says, will expand the present training programs for college aid officials. It will also aim major advertising campaigns at students, he says, "to get the message across that financial-aid is available."

The more serious problems, however, will require major changes in the student-aid laws.

Yet many Congressmen are reluctant to tackle the task—possibly because without more data they cannot predict how their states would fare with a redistribution of the federal aid.

"We've run into exactly the same problems as Mr. Kornfeld has," says Thomas R. Polly, Democratic counsel to the House Subcommittee on Postsecondary Education.

"When you actually start legislating in the field," says Congressman Ford, "you really start flying by hunches and pressures."

As an example of the problems that Congress faces, Mr. Ford points to the "standoff" between the Administration and Capitol Hill this past summer over the campus-run National Direct Student Loan program, which the Carter Administration wanted to eliminate.

The Administration argued that other low-interest, government-backed loans were available to students from banks participating in the Guaranteed Student Loan program. College officials protested, saying that to cut back the direct loan program would cut out the only source of capital available to minority-group and low-income students who have trouble getting loans from commercial lending institutions.

"We defended the current program," says Mr. Ford, "with the argument to the Administration that, while we cannot prove our case to continue at the current level, neither can you make the case, with any information that we are willing to accept, that it should be cut."

As a compromise, Congress voted to maintain the current level of spending on the student-loan program, $310.5-million, while the Secretary of H.E.W. commissions a study of the program.

Mr. Ford says he and his colleagues on Capitol Hill feel such compromises are not the way to run the nearly $12-billion student-aid structure.

Yet Congressmen and Senators insist on passing the buck back to the Administration. Until the people who run the programs come up with specific legislative proposals, they say, Congress cannot undertake a major overhaul of the programs.

That certainly is the sentiment of at least one leading education supporter in the Senate—Sen. Claiborne Pell, chairman of the Subcommittee on Education, Arts, and Humanities.

"Even if Senator Pell thought it were necessary right now—which I'm quite sure he doesn't—a major overhaul of the programs as complex as student aid would have to come from the Administration," says one of his aides. "Those kinds of recommendations are simply beyond the capacities of any one Senator's or Congressman's staff."

SPECIFIC PROPOSALS

Mr. Kornfeld acknowledges that if the buck is to stop anywhere, it will have to be at his desk.

He promises that by this time next year, he will have specific legislative proposals ready for Congress.

How drastically those proposals will change the present student-aid structure, however, is a question Mr. Kornfeld is not ready to answer—at least on the record.

Some of the major changes that students and educators want are out of his bureau's jurisdiction. The largest of all the federal student-aid programs, for example—the GI Bill—is operated by the Veterans Administration.

Although they admit that Mr. Kornfeld will probably have little political clout outside his own agency, some Congressmen and educators would like to see him persuade the V.A. to lift some of its controversial restrictions that limit the enrollment of ex-GI's in certain types of courses and educational institutions.

"Certainly there may be obstacles to face," Mr. Kornfeld says. "But the first step is for the bureau to listen very carefully to what colleges and students say they need—and to what Congressmen and Senators say is politically feasible."

The best person to put together a new legislative package for the Office of Education's student-aid programs, Mr. Kornfeld says, is an aid official on a campus, who actually sees all the programs come together in a real-life situation.

The man chosen for the job has asked for anonymity until his position as a special consultant to the Office of Education is officially announced on his own campus. He recently told *The Chronicle*, however, how he thinks the bureau ought to go about drafting legislative proposals.

"In a month, we will have a clear idea of the strategies of how we will proceed, but I am confident it will be teamwork—among the people on the campuses, in H.E.W., and on Capitol Hill. I suspect that is not the federal government's usual approach," he says.

Part of the legislative package, he expects, will rely heavily on the recommendations of a group of nine college aid officers advising Mr. Kornfeld. The panel members, who represent a variety of institutions around the country, are expected to report by December on how federal student-aid funds might be more equitably divided among institutions and students.

NO HOLDS BARRED

According to Robert P. Huff, the panel's chairman and the director of financial aids at Stanford University, the panel has been instructed "to look at the entire funding process—with no holds barred."

"The one obvious question all of us must now face," says the aid officer who is expected to put together the legislative proposals, "is how to pull together each of the different student-aid programs into one coherent philosophy.

"The problem is that there is nearly $12-billion out there in a multitude of programs that grew up very fast."

In the past 10 years, federal appropriations for student aid have grown over 20-fold. Since 1973, the amount of money spent on just one of many student-aid projects, the Basic Grants program, has jumped from $122-million to $1.5-billion.

"The other problem," he says "is that the programs grew up at different times to meet different goals."

Many of the philosophical assumptions on which the programs were based may no longer be valid, and even those that are, he says, may no longer be attaining the goals they were designed to reach.

For example, the federal government now finances at least seven different student-loan programs. One, the National Direct Student Loan program, was originally established as a national *defense* program to compete in the late 1950's with what politicians believed were superior educational opportunities offered young scientists by the Soviet Union. Another, the Guaranteed Student Loan program, was initially designed to give financial relief to middle-income parents who had financial assets, but not the cash, to pay the costs of a college education.

"Not only do we need to decide what the federal government's national goals are," says the university aid officer, "but we also have to decide whether we need seven or eight programs to accomplish them. I expect we will take a very hard look at whether one loan program might not accomplish all the objectives."

Mr. Kornfeld says he is concerned about how much the government expects students to go into debt to finance a college education, and when those debts should come due.

"Under the system that now exists," says Mr. Kornfeld, "students must begin paying back the loans just at the time they are faced with marriage and trying to build a life. I wonder if that is the best time for them—and for the government—to try to collect those debts."

WHAT IS "MIDDLE INCOME?"

That question is particularly important to high-cost institutions, which contend that loans are virtually the only source of aid available to their students—most of whom come from middle-income families.

The problem with some of the solutions that colleges have put forth, says Congressman Ford, is that it "is very hard to categorize 'middle income.' What is middle income in an urban industrial center is not middle income in a Southern rural area.

"It is easy to fall into the trap of believing that people using federally supported student assistance are somehow a homogeneous group and that you ought to be able to devise the same formulation for dealing with all of them."

"Quick fix" solutions will be particularly dangerous, Mr. Ford says, as lawmakers and bureaucrats try to figure out in the coming year ways to cut down on the increasing default rates in the Guaranteed Student Loan program and on other abuses that plague some student-aid programs.

Mr. Ford says that unless Congress gets better information about who fails to pay back the education loans an dwhy, the lawmakers may stop pouring money into *all* the student-aid programs.

Or, he says, the members of Congress, who know little about the programs, may decide to impose a battery of new restrictions on students—while not getting to the root of the problem. That, Mr. Ford says, is what happened when Congress passed the Education Amendments of 1976, which barred students from ridding themselves of their Guaranteed Student Loan debts for five years after the loans become due.

INSTANT EXPERTS

"There is a plethora of articles written by instant experts from very narrow perspectives. They usually revolve around one or two horror stories that say, 'This is an example of how a certain program works.' One of the best examples was a one-pager in Newsweek earlier this spring, in which an unidentified student was quoted as saying, 'I borrowed all this money to get my Ph.D., and it isn't worth a damn. So I'm not going to pay for it.' "

"Reading that article would lead the ordinary citizen to believe we were lending money to a whole bunch of irresponsible little snots who were going off and saying, 'To hell with it, I won't repay my education loans because I only owe it to the government.' "

"We don't have any evidence to substantiate the assertion that it is a widespread phenomenon," says Mr. Ford. "And yet, if we're not careful, crucial federal policies—policies that determine the very course of people's lives—will continue to be made on the basis of just that kind of information."

Senator MOYNIHAN. As you know, on the question of an offset between these programs and others, all the aid programs have either held their own or increased. BEOGS, which went from nothing, it didn't exist in 1970, was $1.7 billion in 1977. That is a lot of money.

The GI bill is falling off.

I wanted to associate myself with the chairman's statement that higher education can take care of itself but it isn't very attractive to hear people say the minute they get the chance they will jack up the prices. That is not our experience over two centuries of higher education in America. That is not what these institutions do. It is not what the people who teach them want.

Isn't it the case in the recent period of inflation that faculty salaries have not kept pace with purchasing power over the last decade? Isn't that generally so?

Mr. PELTASON. That is precisely so, especially since the 1970's, early 1970's.

Senator MOYNIHAN. There is a sense in which the private and public universities and colleges of this country have kept their prices down by lowering the incomes of their teachers?

Mr. PELTASON. That is correct.

Senator MOYNIHAN. I mean——

Mr. PELTASON. The real incomes.

Senator MOYNIHAN. Lowering the real income. You earn less than you did 6 or 10 years ago.

The record is an attractive one, if not enviable in the case of professors.

Mr. **Peltason**. There is one other way in which the institutions have kept their costs down, which is one of our great apprehensions. Most higher educational institutions in the United States, have deferred maintenance, have not repaired the roofs, have not kept up the physical plant, and this is, I think, becoming a very acute problem, especially when you remember that added on to that some additional need for remodeling to comply with OSHA regulations, energy costs.

Senator **Moynihan**. OSHA regulations?

Mr. **Peltason**. So that to keep the cost as low as possible, but to maintain the quality, there has been a tendency to put off a repair, but sooner or later it is going to catch up with you.

Senator **Moynihan**. A final question, and that is just to confirm. I wasn't aware of this. Are enrollments now beginning to decline?

Mr. **Peltason**. They are leveling off and the demography would indicate they will decline as we move into the early eighties.

Senator **Moynihan**. So there is a real prospect that unless there is some exogenous event the number of persons in higher education is going to be contracting shortly and the resources accordingly available to higher will contract?

Mr. **Peltason**. This is certainly one of the major apprehensions of those of us in higher education. The magnitude of the decline will depend upon a variety of factors. You are quite right, a lot will depend on the state of the economy, the state of Federal programs.

Women are going to college at an increasing rate, older people are continuing their education, they are coming back to college, part-time students are increasing, but the number of students between 18 and 21 which we now call the cohorts, for reasons I am not exactly clear, but that category of people is declining.

Senator **Moynihan**. May I just suggest you needn't agree—that a lot will also depend on whether or not this bill gets passed? You might agree.

Mr. **Peltason**. Or some other form of aid to the middle income.

Senator **Moynihan**. Thank you. Thank you very much.

Senator **Packwood**. Thank you.

[The prepared statement and attachment of Mr. Peltason follow:]

STATEMENT OF J. W. PELTASON, PRESIDENT, AMERICAN COUNCIL ON EDUCATION

Mr. Chairman and members of the committee, I am Jack W. Peltason, President of the American Council on Education. I appreciate this opportunity to testify on the various legislative proposals to provide tax credits for educational expenses.

Over the past two decades, the higher education community has watched with increasing interest the growing support in Congress for amendments to the tax code designed to provide parents with some relief from the expenses of postsecondary education. We are interested because we recognize that it is a worthy national objective to help middle-income families meet these costs. For this reason, most of the community has shifted in recent years from a position of opposition to one of neutrality and, in some cases, support for the concept of tax credits.

At the same time there is continuing concern within the community that tax credits may be viewed erroneously as aid to higher education, rather than to taxpayers, and that if this view prevails in Congress, the funding of direct assistance to needy students and of categorical support for important educational programs could be adversely affected.

The resulting variety of attitudes on this issue frankly makes it impossible for me to claim that this statement represents the views of higher education as a whole. There are a variety of views within the different sectors. The American Association of Community and Junior Colleges is supporting tax credits. The National Association of Independent Colleges and Universities gives higher priority to a student assistance strategy. The National Association of State Universities and Land-Grant Colleges is in the process of polling its membership, and preliminary results show approximately equal numbers in support, in opposition, and neutral. The American Association of State Colleges and Universities has taken a position of neutrality, as has ACE as the umbrella association for all of higher education.

Nevertheless I will attempt to spell out in this statement what is known about the need for financial relief for middle-income parents, the effect of tax credits on college costs, some of the different alternatives for providing relief which are supported by different sectors of the community, and some of the concerns that have been raised about these alternatives:

THE NEED FOR FINANCIAL RELIEF FOR THE MIDDLE CLASS

Recent sessions of Congress have reflected rising pressure for some form of relief from college costs for middle-income families. These parents often find themselves at too high an income level for their children to qualify for Basic Grants and other federal need-based programs, but not nearly affluent enough to afford the high cost of college without heavy personal sacrifice.

There are several serious reasons for this pressure for middle-class tuition relief. First of all, families in the $15,000–$20,000 income range find themselves just above the cut-off point for most federal grant-in-aid awards. They may obtain some help from state scholarships and loans, or from the federal loan and work-study programs, but this is often not enough.

Other families with higher incomes may be faced with the problem of paying more than one tuition at the same time. This "sibling overlap" phenomenon has increased since World War II and is now at a peak. A family in this situation may not be faced with a total tuition bill any higher than that of others whose children are spaced at longer age intervals, but the cash flow problems that this family will face can be substantial. Some relief is clearly desirable.

Beyond these two groups, there are many other families who are experiencing financial problems in a variety of ways. America's colleges and universities have made every effort to hold down tuition despite increased costs of services and energy, and the growing burdens of federally mandated programs such as Social Security, ERISA, OSHA, etc.

A look at the current data indicates that the institutions have, by and large, been successful. Average increases in tuition at colleges and universities have not exceeded increases in personal income over the last decade. (Although a recent Congressional Budget Office publication, Postsecondary Education: The Current Federal Role and Alternative Approaches states that increases in tuition have outdistanced increases in median income since 1975, data compiled by ACE and the College Scholarship Service demonstrate that, in fact, actual increases over the last three years do not represent an upward trend from previous years.)

Unfortunately, the cost of other goods and services has substantially exceeded average increases in personal income. Food, housing, and energy costs, particularly in certain areas of the country, have risen dramatically, eating into the household budget and leaving less available for education. Federal payroll taxes as well as state and local income and sales taxes have also undergone significant increases. While the ideal solution to the high cost of housing might be a housing program, and the ideal solution to the high cost of energy might be an energy program, there is a strong case on practical grounds for relieving the general squeeze on middle-income families through a tax mechanism such as a tuition tax credit, deduction, or deferral. This is so despite the fact that economists have been unable to identify a unique cost squeeze on middle-income families (in the sense that educational expenses do not represent a larger share of personal income).

OPTIONS FOR CONGRESSIONAL CONSIDERATION

To ameliorate the burden on middle-income families through a program directed at the cost of college, there are several legislative options, which address different aspects of the problem but which are not mutually exclusive. They could be enacted in combination with one another. Their principal features merit careful consideration:

1. *A tuition tax credit or deduction*, which would provide families with tax savings of $250 to $500 for college expenses. The most widely known proposals of this nature are the Roth (S. 311) and Moynihan-Packwood (S. 2142) bills. This credit would be available to all undergraduate students and their families, except for those students and families who have insufficient federal income tax liabilities. In the case of S. 2142, the credit would be available for elementary and secondary expenses as well.

In the light of criticisms that tax credits would also assist high-income taxpayers, the committee may wish to consider variants on these proposals which would phase out the deduction or credit for families with income over a certain level, to target federal aid more directly to the middle class.

2. *A tax deferral.* In considering proposals to provide student aid through the tax system, the Committee should take a close look at tax deferral proposals such as the plan that has been advocated for several years by Congressman Mikva (H.R. 3268). A deferral plan would permit families to postpone part of their taxes at a time when the cost of postsecondary education is highest, and to spread repayment over a period of years. It would, in effect, be a loan program through the tax system.

Tax deferrals have been proposed as a means of providing more assistance to middle-class parents than would be made available through most of the tax credit plans, without a corresponding increase in cost to the government. The Mikva bill, which would provide a deferral of up to $1,500 a year, would result in a federal revenue loss of up to $8 billion in the early years. But later, as the deferred taxes are paid back, the program could be self-supporting and, if an interest rate is charged, could even increase federal revenues. While this alternative may not be the complete answer in itself, it could be combined with a tax credit, thereby giving parents an option to choose the kind of program most appropriate for their higher education financing needs.

3. *A tax allowance aimed at preserving diversity in higher education.* One of the concerns of Congress in enacting legislation to aid higher education has been the need to preserve the variety of public and private institutions that we have in this country. In particular, the cost of sending children to independent colleges, which by and large rely heavily on tuition and fees in meeting operating costs, has risen to a point where it places a severe burden on many families. This problem can be addressed in several ways:

A graduated tax credit, which would provide a larger credit (as a percentage of tuition) to students attending high-tuition schools.

A tax credit floor, which would make the credit available only for tuition expenses in excess of a certain amount.

An effort-sensitive tax credit, which would be available only for tuition expenses in excess of a certain percentage of adjusted gross family income. (This type of plan is being proposed to the Committee by the Great Lakes Colleges Association.)

4. *Increased financial aid for middle-class students.* This major option would utilize existing programs rather than make adjustments in the tax system, although it should not necessarily be viewed as an alternative to tax allowances. If the primary purpose is to assist middle-income students in meeting their educational costs, as distinct from providing tax relief for middle-income families, the most direct and efficient approach is to raise the income ceiling and appropriations for Basic Grants, increase the availability of loans, and make other improvements in existing student aid programs.

Senator Pell announced last week that he will introduce legislation which would pursue this student aid alternative. His proposal would cut in half the proportion of discretionary income required as the family contribution, which would have the effect of making 1.3 million students from families with income up to $25,000 eligible for Basic Grants, at a cost of an additional $1.2 billion.

This approach would target aid most directly to those students with the greatest need. The higher education community is generally agreed that such changes constitute our highest legislative priorities.

OTHER CONCERNS OF THE HIGHER EDUCATION COMMUNITY

Although all of the various tax allowance options have their supporters, I would like to note several concerns with some of the underlying assumptions in the various bills.

1. *Effect on College Costs.*—It has been suggested that some colleges and universities will seize upon the enactment of a tax credit as an opportunity to increase tuition, thereby turning the credit into an institutional subsidy. This argument ignores two facts: (a) that colleges and universities are extremely reluctant to increase tuition under any circumstances, and (b) that tuitions are certain to increase in the coming years, regardless of the passage of any tuition tax credit relief.

Boards of trustees elect to raise tuition as a last resort, when other sources of revenue, such as state appropriations or investment and endowment income, have been exhausted. Provision of tax credits to parents might trigger tuition increases in some cases, in the sense that some institutions might face the inevitable a bit sooner than would otherwise be the case. But institutions of higher education do not act as profit-making businesses, raising prices in order to maximize their gains as market conditions permit. Rather, the business of higher education is to provide the best education for the largest number at the lowest possible price.

Institutions have a strong built-in incentive not to increase their prices in their knowledge that, if tuitions rise too high, students will go elsewhere or not at all. Trustees increase prices only when they feel it is necessary to maintain the quality of the educational program, or when alternative income sources are inadequate to conduct the programs which the leaders of the institutions judge to be necessary.

Furthermore, there is some concern in the community that state legislatures might seize on any type of tax allowance as an excuse for decreasing state appropriations for higher education. Public institutions, and their national association, the American Association of State Colleges and Universities, remain firmly committed to the principle of low tuition. Although Congress cannot control what other legislative bodies do, it should make clear that any tuition tax credit enacted is designed to aid taxpayers, and not to aid institutions or to substitute for state appropriations.

2. *Maintenance of Existing Aid for Higher Education.*—Many within the higher education community are concerned that the resources necessary for a tax allowance may be provided at the expense of higher education programs such as student aid. They fear that enactment of a tuition tax allowance may make it difficult for Congress to increase support for existing programs, or to initiate any new higher education programs.

The aid that is being proposed under the tax credit programs would primarily benefit parents of students. It would not remove the necessity for existing direct federal assistance and current tax incentives to meet the student and institutional needs of American higher education. If anything, the rising cost of living will result in a need for increase appropriations for student assistance, and inflation together with the costs of meeting federally mandated social programs will require continuation of existing categorical programs and will increase the need for institutional support in the near future. Certainly, the higher education community will look to the authorizing and appropriating committees of Congress to provide continued leadership and support, as they have in the past, to see that tax credits do not substitute for increases in existing student aid and categorical programs.

A related issue is the coordination between a tax credit and the existing student aid programs. Under the accepted "needs analysis system" by which a student's need for financial aid is calculated, a federal income tax credit would increase the amount of family resources available, which would reduce the amount of grant aid a student would be eligible to receive. In addition, since the proposed bills provide for a reduction of the credit in the amount of scholarship assistance received, most lower- and middle-income students who are recipients of federal, state, or private scholarships would receive little help from a tax credit. Neither, of course, would those families whose incomes are so low that they do not pay any income tax.

OTHER ISSUES

1. *Treatment of Part-Time Students.*—Proposals to provide financial relief to parents should not disregard dependents who attend school at least half time. We understand that S. 2142 would apply to part-time students, but some bills are restricted to full-time students at degree-granting institutions.

In recent years there has been marked increase in the number of part-time students attending institutions of higher education, until they now represent

40 percent of enrollments. Part-time undergraduate students, if they attend school at least half-time, are already eligible for Basic Grants, Supplemental Grants and most other Office of Education student assistance programs. It would be inequitable to bar such students, many of whom are working part-time to meet their financial obligations and the monetary needs of their families.

2. *Inclusion of Graduate and Professional Students.*—While S. 2142 and several other bills would cover graduate and professional students, many others do not. Graduate and professional students should be eligible for tuition tax relief on the same basis as undergraduates. The cost of tuition at graduate and professional schools often exceeds the cost of an undergraduate education, and is borne by individuals who typically have already incurred debts in securing their undergraduate education, and have other financial obligations. In addition, many stipends received by these students to aid them in their educational pursuits are considered taxable income by the IRS. Yet, graduate and professional students are not eligible for existing grant programs.

Any program of tuition tax relief should recognize the plight of this class of student and provide equitable treatment for them.

3. *Coverage of Living Expenses.*—Most of the tuition tax credit bills cover tuition and fees, but do not extend coverage to room and board. Such coverage should be considered, since they are an essential part of college costs, recognized in all federal student aid programs. A residential educational experience is a valuable part of going to college for many students.

4. *Problems of Jurisdiction and Verification.*—Most of the tuition tax credit bills impose a number of duties on the Internal Revenue Service to determine what constitutes a qualified education program. This raises the possibility of extending jurisdiction of the tax-writing committees into areas which are the responsibility of the education committees of Congress. Rather than establishing duplicate procedures, the existing accreditation mechanisms within HEW should be utilized for such functions to avoid further federal involvement in the determination of educational standards.

In addition, we would hope that any tuition tax credit legislation would not impose additional paperwork burdens on institutions, by requiring recordkeeping or certification of attendance of students, beyond that normally carried out by an accredited, nonprofit institution of higher education.

The range and complexity of these issues, and the differing implications of the various alternatives, illustrate why there is no broad consensus within the higher education community on any single proposal for tax credits for educational expenses. We have a great deal of data and analysis which we would be glad to make available to the Committee, and we will be glad to answer any further questions.

AMERICAN COUNCIL ON EDUCATION,
Washington, D.C., January 26, 1978.

Hon. HARRY F. BYRD,
Chairman, Subcommittee on Taxation and Debt Management, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It was an honor to testify before your Subcommittee January 19 on the issue of tax allowances for higher education expenses. For the record, I would like to supplement my testimony with further information on the cost of college, especially as it affects the middle-income student. My concern is that a few inaccurate, though often-repeated, statements will create the false impression that college costs are out of control, and constitute a major reason for passage of tax credit legislation.

These statements, and my response to them, are as follows. (The statements are taken directly from "Hearings before the Task Force on Tax Expenditures, Government Organization, and Regulation," Committee on the Budget, House of Representatives, April and May 1977, pp. 41–43 and 60–63. They have been made in other contexts as well.)

1. "The cost of college is rising faster than the cost of most other goods and services."

The most recent data indicate that, over the last five years, college and university tuitions have on the average, risen at a rate close to (though less than) the rate of increase in the price of all goods and services. Between 1972 and 1976, the Consumer Price Index increased 36.1 percent. Over the same period, tuition and fees at public colleges rose an average of 31.6 percent and tuitions and fees at private colleges, 35.7 percent.

On the other hand, the cost of fuel and utilities during that period rose 52.1 percent and the cost of food rose 46.4 percent. These data lead one to the conclusion that much of the "squeeze" on middle-income families results from forces over which institutions of higher education have little or no control.

2. "Middle-income students, from families earning between $10,000 and $20,000 annually, pay a greater net cost to attend college than do either the poor or the wealthy."

In some instances, an American Council on Education study has been cited as documentation for this statement. There is no such study. Data from the 1975 Cooperative Institutional Research Program make it possible to compare the relative college cost burden for low ($0–$6,000), middle ($15,001–$20,000), and upper ($30,000 or more) income students. The clear finding is that as family income rises, the percentage of college costs accounted for by student and family sources also rises.

For instance, in low-cost institutions, low-income students pay 41.0 percent of their college costs, middle-income students pay 85.5 percent, and high-income students pay 94.3 percent. Similarly, in the high-cost institutions, low-income students pay 40.9 percent of their costs, middle-income students pay 63.3 percent, and upper-income students pay 93.8 percent.

3. "Between 1969 and 1974, college attendance for children of middle-income families declined at a rate of 22 percent, while enrollment of lower and higher income students remained fairly stable."

While the data indicate a slight decline in the enrollment of students in most income groups since 1969, there is no evidence of an enrollment decline of the magnitude indicated in this statement. On page 9 of the new CBO report, "Federal Aid to Postsecondary Students: Tax Allowances and Alternative Subsidies," it can be seen that the enrollment rate of students in the $8,525–$17,050 income group fell 2.5 percent between 1969 and 1976 and the rate for those in the $17,050–$25,575 group fell 3.1 percent. (The figures are in 1976 dollars.) While these declines are a matter of serious concern, they are not even close to a 22 percent drop-off. It must also be kept in mind that the enrollment rate of high school graduates from low-income families is still at only about 35 percent, while the rate for graduates from middle-income families remains over 50 percent.

I would like to make one additional comment. Recent stories in the media have made use of data from the ACE report, "An Analysis of S. 311: The College Tuition Tax Relief Act." I must caution that the projections in this report, particularly as they concern the distribution of tax expenditures among families at different income levels, were based on preliminary data which have since been updated. Our current estimates for S. 311 are that, assuming a $250 maximum credit in 1979, some 12.3 percent of the expenditures would go to families with under $10,000 in income, 18.7 percent would go to those in the $10,000–$15,000 range, 35.2 percent would go to those in the $15,000–$25,000 range, and 33.8 percent would go to families earning over $25,000. In other words, close to two-thirds of the benefits would be received by families earning under $25,000 a year. I have provided Senator Roth and his staff with a more detailed breakdown.

Once again, I thank you for the opportunity to testify. I hope that this additional statement can be included with my testimony in the record of your hearings.

Cordially,

J. W. PELTASON.

Senator PACKWOOD. Next we are going to go with a panel of Dr. Walter Berns and Antonin Scalia, who has not yet arrived, but will be here momentarily. So I wonder if Walter Berns would come up and start and I think before you are done, Professor Scalia will be here.

I would like to place in the record right after the statements of these two a letter from Professor Freund of the Harvard Law School who is in opposition to this bill and argues against it on a constitutional basis. He is one of the eminent constitutional spokesmen in this country and I think it would be appropriate to have his letter in juxtaposition to your statement, Professor.

Go right ahead.

STATEMENT OF DR. WALTER BERNS, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF TORONTO

Mr. BERNS. Thank you, Mr. Chairman. I was told when I came here this morning that the statement that I prepared had not been received.

Senator PACKWOOD. It has now. We have it.

Mr. BERNS. Thank you.

I suppose it is not inappropriate for me to begin a statement that I want to make as to the constitutionality of this probability by quoting the first President of the United States from his farewell address.

This is his statement, part of it:

> Over all, the dispositions and habits which led to political prosperity, religion and morality are indispensable supports. In vain what that may have claimed the tribute of patriotism who labor to subvert these great pillars of human happiness, these firmest promises of duty of men and citizens, the mere politician, equally with the pious man ought to respect and cheer each of them. And let us with caution indulge the supposition that morality can be maintained without religion under both reason and experience forbid us to expect that national morality can prevail in exclusion of religious principle.

Mr. Chairman, I would submit that Mr. Washington was speaking here as a politician and not as a pious man and as such, he is arguing that the political health of the United States depends on citizens of a certain character, a certain moral character, and that morality depends on, in the case of most men, religious training, and religious institutions.

The first question then faced by this committee, at least the first question that I will address myself to, is whether Government is entitled to support the institutions that provide this kind of moral education, an education that Washington thought was politically necessary.

I would submit that the first amendment, the relevant constitutional provision, the first amendment as originally understood leaves no doubt that the answer to this question is "Yes." We have doubts with respect to the answer to that question today largely because of statements made in what is the leading establishment clause case, *Everson* v. *Board of Education*, 330 U.S. 47, and the cases following *Everson*.

As I say, *Everson* is the leading case, the leading establishment clause case. And Justice Black, who wrote the opinion in that case, said there, among other things, that the establishment clause forbids Government to aid religion even on a nondiscriminatory basis.

As I argue in my statement, and as I have argued more fully in my recent book on the first amendment, and indeed as my late colleague, Professor Freund at Harvard Law School, Mark De Wolfe, of Howe, also argued in a book, Justice Black was simply wrong in *Everson* and the author of one of the separate opinions in *Everson*, Justice Rutledge, was perhaps even more wrong than Justice Black with respect to the original intention of the first amendment.

The men who wrote and ratified that did not intend it to forbid aid to religion. The aid would have been given on a nondiscriminatory basis because the United States is not based on a religious truth, but this principle does not forbid nondiscriminatory aid in the form of property tax exemptions which the Court has, of course, upheld, and even grants of money which the Court has upheld, well, grants of money to church-related colleges, for example.

Senator **PACKWOOD**. Let me ask you something here. I have read your book, the recent book, and it is an excellent book. As I understand from that and other readings that I have done, it was absolutely common for at least town councils to appropriate public moneys for the support of these schools during our revolutionary period and up until we started to have public schools, and almost all of those schools were religious schools.

I am assuming, I have never checked it man for man, I am assuming any number of the men who served in the Constitutional Convention, certainly prior and probably after, served on town councils, voted for these appropriations, and in no way found them offensive to what they had drafted in the Constitution.

Mr. **BERNS**. I would agree with that, sir, and of course the early school disputes, when public schools really began to be developed, the religious question that was disputed was of a sectarian sort, that is to say, it was the desire of the authorities establishing these schools to see to it that the religious or moral education that was provided was not narrowly sectarian, and that incidentally was also the position of the man we traditionally understand to be the hero of the public school movement in the United States, Horace Mann, and I have quoted him in the book.

We have, I think, an improper picture of what was going on in the schools. Of course, Senator Moynihan earlier today referred to that when he was talking about the activity of the opposite political party in 1876.

Senator **MOYNIHAN**. Yesterday I was telling the early history in New York City and the split that persists today over the public schools. The State of New York provides funds for public education all of which went to denominational schools and then there was a scandal in the 1820's, when the Baptists were found padding their payroll. Then there was a State Commission—the sort of requirement could have been reported in yesterday's New York Daily News.

And then what are now known as public schools were created. That is why we call them PS 108. And the split that took place with Bishop Hughes, who would not join in, was the question of what Bible should be used, not whether a Bible should be used, but what Bible. There are tremendous differences, as you know, and 125 years ago the salvation of souls was thought to depend on the wording of the translation of the Lord's Prayer.

Mr. **BERNS**. Yes; sir. The point I would make here is the purpose of the first amendment was, as I say, to subordinate religion and, I mean by that generally to subordinate religious opinion and religious tenets, religious truths, to the selfish truth all men are created free and equal, and that means, among other things, that proposition to which we are all in this country equally dedicated, that means among other things that no man may rule another man without that man's consent.

Now, of course, the point was this was denied by some churches. As a matter of fact, we have a vestige of that right in my pocket right here. I come now, although I am an American and teach American constitutional law, I come from Toronto, and every coin of the Canadian realm has the word Dei Gratia Regina, which is the grace of God.

That is the proposition that some churches maintained, and that is a proposition that the Declaration of Independence, and it was, of course, part of the purpose of the first amendment to see to it that that proposition didn't get accepted here, namely, that some people ruled by the grace of God.

Government has to be instituted among men because all men are by nature created free and equal and government has to be made in order to secure those rights.

Now, no church in the United States, particularly, say, the Anglican Church, which is responsible for this language, and the Canadian coins that I have just read—that particular church had no official status in the United States because no church by principle could have any official status in the United States because the United States does not recognize any religious truth, all religious opinions as far as the U.S. Government is concerned are just that, they are opinions, and all of them, of course, are to be tolerated.

So that what I mean by subordinating religion, this of course is the principal basis of American toleration.

But I also mean by subordination that religion was to be consigned to what we say today to be the private sector. It was made a part of the private world, and there it was to remain and there was no argument about this, independently, in the debates on the first amendment. This was the opinion obviously of everybody that their religion was to be subordinated, it was to become a private thing and in the debates on the first amendment, the subject wasn't discussed.

What was discussed, however, was the form of words of the first amendment, that would accomplish the subordination of religion, but in a sense not so much subordinate religion to the private realm but don't make it impossible, don't make it possible that or likely that, these private institutions would fall into some attitude and would languish and would die, which might very well be the situation today.

Senator PACKWOOD. I don't want to inhibit you and I know you have come from a distance. I have to be fair in trying to keep people's statements down. We have many, many witnesses.

Mr. BERNS. Yes sir, I will finish.

Senator PACKWOOD. Thank you.

Mr. BERNS. Very quickly now. As I say, what was discussed was the form of words, that would in a sense make it possible for a government to provide aid to religion. And I have given examples of that in my book, I think there are examples of it in my statement, I won't repeat them or quote them here.

But the point is these men on the floor of the House, and obviously some in the Senate, although we don't have the debates at that time in the Senate, these men like President Washington saw the connection between morality and religion and between morality and public health, or political health of the United States.

The second question, and I will merely state it and then be quiet. I have been addressing myself to the constitutional issue here, and as I say, I am persuaded there is no doubt as to the constitutionality of this bill.

The second question is not constitutional but it is political, and that is, of course, whether Congress should provide this particular form of support. I have no doubt that it should but I don't find it necessary to say anything with respect to that but, of course, if you ask me questions, I will be very happy to do so.

Thank you, sir.

Senator PACKWOOD. Professor Scalia.

STATEMENT OF ANTONIN SCALIA, PROFESSOR OF LAW, UNIVERSITY OF CHICAGO

Mr. SCALIA. Thank you, Senator.

Mr. Chairman, I appreciate the opportunity of appearing before you today, to address the constitutional aspects of S. 2142. I will not take much of your time—partly because you have wisely not agreed to give me much of it, and partly because the message I have to convey is brief.

It is my understanding that this committee has not often had to grapple, as others have, with the possible impediments to legislation posed by the freedom of religion clause and the establishment clause of the first amendment. If that is so, you will be surprised, I expect, by the barrage of categorical assertions you receive on both sides of the issue—that the proposal before you, insofar as it provides tax relief for tuition payments to sectarian schools, clearly should be, or clearly should not be, regarded as constitutional.

I side with the former camp myself, but that is not primarily what I want to talk to you about. The principal point I want to make is that, regardless of how one feels about the "shoulds" of the matter, the issue has not been resolved by any holding, or even by any consistent line of dictum, from the Supreme Court. For that reason, the responsibility which rests upon you is all the greater. In approving or disapproving the present proposal on constitutional grounds, you will not be following—and cannot pretend to be following—any dictate of the Supreme Court, but will rather be expressing your sense, and the sense of the society as to what our most profound national convictions require. Your expression, in turn, can be expected to influence the course which the Supreme Court will steer in the future.

It is impossible, within the time allotted, to describe with any completeness the utter confusion of Supreme Court pronouncements in the church-state area, but a few examples may bring home the point. The Court has not been consistent even on the fundamental question of whether the constitutional prohibition against establishment of religion forbids merely the preference of one religion over another, or rather prevents any special governmental favors to religion in general. In 1947, the Court said that the first amendment,

> Requires the state to be a neutral in its regulations with groups of religious believers and nonbelievers; . . . State power is no more to be used so as to handicap religions than it is to favor them.

Five years later it had changed its mind, and wrote the following oft quoted passage:

> We are a religious people whose institutions presuppose a Supreme Being. . . . When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of the public events to sectarian needs, it follows the best of our traditions. For it then respects the religious

> nature of our people and accommodates the public service to their spiritual needs. . . . The government must be neutral when it comes to competition between sects . . . But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction.

Zorach v. *Clauson*, 343 U.S. 306, 313–14 (1952).

Since then, the Court's expression of basic first amendment philosophy has changed yet again, reverting to the principle that religion in general can be neither favored nor disfavored. See, for example, *Abington School District* v. *Schempp*, 374 U.S. 203 (1963). These dicta, however, are impossible to square with the Court's decisions—which have, for example, prevented the State of Wisconsin from compelling Amish parents to send their children to school beyond eighth grade—an exemption which the State would not be compelled to grant those who demand it for nonreligious reasons—*Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); and prevented the State of South Caroline from withholding unemployment compensation from a Seventh Day Adventist who refused to accept employment that required Saturday work—again a special privilege accorded only to religion—*Sherbert* v. *Verner*, 374 U.S. 398 (1963).

Of course even the neutrality principle would support—indeed, require—the inclusion of sectarian school tuition payments in the benefits accorded by the present bill—but I raise the issue merely to demonstrate how inconclusive the Supreme Court's pronouncements are, even with regard to the fundamental philosophy of the first amendment.

If one wishes to examine the specifics of Supreme Court holdings, confusion still abounds. The Court has, for example, approved State provision of bus transportation to and from school for parochial school students, *Everson* v. *Board of Education*, 330 U.S. 1 (1947), but has disapproved provision of transportation to and from field trips, *Wolman* v. *Walter*, 97 S. Ct. 2593 (1977); it has approved State provision of textbooks for use in sectarian schools, *Board of Education* v. *Allen*, 392 U.S. 236 (1968), and *Meek* v. *Pittenger*, 421 U.S. 349 (1975), but has disapproved provision of other instructional materials and equipment, *Wolman* v. *Walter*, supra; it has sustained State exemption of churches and places of worship from property taxes, *Walz* v. *Tax Commission*, 397 U.S. 664 (1970), but has, in certain circumstances, stricken down State income tax remission for tuition payments to sectarian schools, *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973). I will have more to say of that case shortly.

Senator PACKWOOD. I want to give you the same admonition I did to Professor Bern. In fairness, I realize you are supporting our position on this. I would like to let you go on until 2 or 3 o'clock. There is another panel I want to put on before noon, however. I particularly want you to get to the *Nyquist* case, which over and over is cited as reason this bill is constitutional. So if you could emphasize that.

Mr. SCALIA. That is exactly the portion of my testimony I intend to skip.

Senator PACKWOOD. You are going to skip *Nyquist*?

Mr. SCALIA. Yes, sir.

Senator PACKWOOD. Up to you.

Mr. Scalia. If you will, I would like to have that portion of my prepared statement inserted in the record—but that isn't what I most want to discuss with you. There is a portion of my printed testimony which distinguishes both *Nyquist* and *Sloan*, which are two cases which will undoubtedly be cited by the opponents of the legislation as establishing that it is unconstitutional. You can refer to the text for that point.

But a detailed discussion of *Nyquist* and *Sloan* is in digression from—and even in disregard of—my principal point—which is that the decisions of the Supreme Court in this area of governmental aid to religion in general, and to sectarian education in particular, have little to tell you. However neat their formulation of principles may appear—and even this changes every decade—their decisions conform neither to any consistent interpretation of those principles nor to one another.

Now, there is a large body of men and women to which I belong, called lawyers, who, for our sins, must analyze and seek to reconcile, however artificially, all the decisions and all the pronouncements of the Supreme Court—and even to identify the particular constitutional philosophies of the individual justices, so that we can predict—in an area such as this, where the Court frequently splits into two or three or even four groups of varying composition—how many votes will be for affirmance and how many for reversal in the next case. That is fine, I suggest, for us lawyers; it keeps us, perhaps, from greater mischief. But for the representatives of the people to proceed in this fashion in determining whether or not a particular proposal before them is in accord with the fundamental principles of our Nation; for the Senate of the United States to dissect cases and hang on every stray judicial dictum in a body of opinions which is notoriously unclear and contradictory; that, I suggest, would be grotesque. And it would display, I think, not so much a fine regard for the Constitution as a failure to appreciate the role of this body in the development of constitutional law.

This area of church-State relations in an era when the Government has become deeply involved in every aspect of human life—and when many activities, including education, can no longer feasibly be conducted without governmental assistance in some form—this area resembles in many respects that of civil rights, where the Court has taken guidance from the Congress as to what the fundamental beliefs and aspirations of our people require.

I urge you, then, to approach this issue as a question of what the constitutional law should be, rather than vainly seeking to determine what it is under the decisions of the Court. For me, the answer to that question seems quite clear. There is no doubt, of course, that the tuition tax relief provided by this legislation is constitutional as applied to parents and students paying tuition to nonreligious private schools. Is is conceivable that in this country—as opposed, let us say, to Hungary—it is not only proper, but necessary to single out for special discrimination those parents who choose to follow the long American tradition of religious schooling? Must the income tax deduction for charitable contributions be similarly limited, so that only contributions to religious organizations do not qualify? You must ask yourselves whether the special solicitude for religion contained in the

Constitution was meant to produce such a distinctively antireligious result.

Senator **Packwood**. Thank you very much.

I want to address to both of you a question Professor Freund raises on page 3 of his letter when he says:

> It is true tax deductible charitable contributions may include gifts to churches but here the class of deduction is an extensive one, so that the focus is not on religious charities. By diffusing the benefits there is a diffusing of the church-state involvement."

Under the bill that we have introduced, public and private education at the primary, secondary, and vocational higher education level are included. It would include tuition credits if public schools chose to charge tuition, which they are perfectly at liberty to do. There is no Federal constitutional prohibition against it.

The amount of money under this bill that will go to private education, or go to the parents or students who attend private schools, let alone sectarian private schools, is a relatively small part of the bill.

Would that not surely meet the so-called primary effect test that the Court has set down as being one of the standards that they say a bill to be constitutional must meet?

Mr. **Bern**. Well, my answer to your question is yes. Of course, I would also distinguish this from other kinds of provisions that have been before the courts. This is, of course, indirect so far as it goes to the parents or the students themselves, rather than to the institution, and these, of course, are schools that are involved here, not churches.

One remembers that in 1970 the Court upheld by a vote of 8 to 1 a property tax exemption in the *Walz* case, but generally, if I may, it will take 10 seconds, Senator, I would support the testimony and the approach that has just been offered you by asking you to include in the record a statement from a distinguished predecessor in the U.S. Senate, this is Senator Calhoun, speaking on the Oregon bill on June 27, 1848, and there is a question of constitutionality that came up, and he said, and I quote him, "Precedents even in a court of justice can have but little weight where the law is doubtful and should have little in deliberative bodies in any case on a constitutional question."

Sound advice, I think.

Senator **Packwood**. Not only do I like the quote, but any quote relating to Oregon will be placed in the record.

I have no other questions. Pat?

Senator **Moynihan**. I want to keep these two gentlemen here a moment, Mr. Chairman.

Senator **Packwood**. Let me interrupt and tell the audience what my plans are.

We will take the next panel before lunch. We will not get to the remainder of the witnesses until after lunch. What time we take up this afternoon will depend upon what time we break with the next panel.

Senator **Moynihan**. It is wonderful to have scholars of such distinction and clarity before us. Allow me to indulge just a bit and prolong their stay.

Yesterday, Professor Scalia, we heard testimony in which was solemnly proposed to us a kind of doctrine of constitutional fatalism. We were advised that having taken an oath to support the Constitution of the United States, we dare not propose any legislation which the

Supreme Court might hold unconstitutional. Our attention was directed to the tragedy that some communities opposed the *Brown* v. *Board of Education* decision after the Supreme Court had ruled, and I asked, well, was it also tragic that the NAACP opposed *Plessy* v. *Ferguson* after the Supreme Court ruled? No, we assured, that was different.

I would like to emphasize that it seems to me there ought to be a sociology, a political history, of the Court in these matters. I think Professor Scalia has almost suggested that you won't find your answers in law, but I was interested yesterday by a line from the Chief Justice's opinion for the plurality in *Tilton*, in which he made this really extraordinary statement. He said that the Court distinguished between lower and higher institutions of learning primarily on the ground that, in the words of the Chief Justice: "College students are less impressionable and less susceptible to religious indoctrination."

Well, if you say that, you will say anything. If you think anybody knows anything about a subject like that, that the American Journal of Psychology has studied a stratified sample of 700 students and determined that at age 17 years 9 months you were impressionable, but at 18 years 3 months you had ceased to be impressionable.

The Chief Justice relied upon an empirical statement of which there is no empirical evidence one way or the other, and you are never going to find any evidence of that kind of thing.

What is going on over there?

Mr. SCALIA. Let me make it clear what I have said and what I haven't said.

Senator MOYNIHAN. Don't let me tell you what you have said.

Mr. SCALIA. I am not saying the Congress should never look to an established body of Supreme Court opinions which sets forth a consistent constitutional philosophy and a clear line of precedent. What I am suggesting is that the confused series of cases dealing with church-state is a visible embarrassment. It makes no sense. The principles enunciated are not indeed followed by the decisions, as I tried to indicate in my testimony.

With respect to the previous question that Senator Packwood asked: I didn't respond to it because, as I say, my heart is not in it. I don't think the way to approach this subject is to dissect a body of opinion that concededly makes no sense. Justices of the Supreme Court have acknowledged that themselves. But the question put by Senator Packwood was whether the broad scope of this legislation makes it different from the laws of New York and Pennsylvania that were struck down, and I think the answer is clearly yes. Indeed, there was even a suggestion in the *Nyquist* opinion itself—phrased in the form of nonsuggestion—that a statute of the present sort would be different.

The Court said that it was not expressing any opinion as to whether the outcome might be different if the law were broader, and not so narrowly focused upon private schools in a State where the vast majority of such schools were Catholic.

But, in any case, I could not have answered your question, would the Supreme Court surely uphold this? I would say the Supreme Court surely should uphold it. I don't think anybody can tell you what the Supreme Court surely would do. For instance, one of the prongs of its three-pronged test, as originally phrased, was whether the primary purpose and effect of the law is to foster religion; but in the latest cases, this suddenly becomes, over the dissent of one of the Justices, a primary purpose and effect. So the thing is evolving and changing as we go along. There are inconsistent opinions. There are inconsistent formulations of theories. There are inconsistent interpretations of formulations of theories.

Senator PACKWOOD. The reason I asked the question, despite the fact I agree totally with what you say, I don't know how close the votes will be on the Senate floor when we get the bill there, and there are a number of Senators who would vote against us if they were persuaded that the Supreme Court had irrevocably set forth a line of decisions that said this bill was unconstitutional. They have not, and every scrap of evidence I can find, and every bit of constitutional argument I can muster to defend against that irrevocable argument I am going to use once I get over that hurdle. Those 10 votes are up for grabs in terms of convincing them of the merits of the policies of this bill, but not if they are lobbied and persuaded by some that there is not an iota of possibility that the Supreme Court will ever, ever, ever find this kind of act constitutional.

Mr. SCALIA. It is impossible for any reasonable man to hold that opinion, Senator, just as I would say it is impossible for any reasonable man to tell you that beyond one iota of a doubt they will affirm it. What I am suggesting is——

Senator PACKWOOD. There are people coming on the panel after you that I regard as reasonable who hold that opinion.

Mr. SCALIA. Well, that will have to be on their heads. I refuse to take it on mine.

What I am suggesting is that, because of the very confusion of the Supreme Court law on this subject, it is all the more important that the Senate make up its mind, on its own, as to what the fundamental traditions of the society require—and on that issue I have no doubt whatever.

Senator MOYNIHAN. May I interrupt to say the buzzer you just heard, Professor Scalia, was the announcement that the second session of the 95th Congress has now commenced and at this moment, somebody is praying over there in the Speaker's chair. [Laughter.]

And he will be praying for approximately 3 minutes. That is about as much as they are allowed. Then the Chair takes over and the gavel.

Mr. BERNS. If I may, the next time someone suggests to you it might be unconstitutional for you to support legislation which is of dubious constitutionality, refer to Lincoln's statement with respect to the *Dred Scott* decision.

Senator MOYNIHAN. Well, exactly.

I would like to take one more moment to ask Professor Berns a point which it seems to me probably explains what Professor Scalia had called the visible embarrassment of this confusion over the decision in Everson. I really do think Everson is in a sense a *Dred Scott* decision, a *Plessy* v. *Ferguson* decision.

It seems to me that the critical intellectual argument here, which if we succeed in making, will change the course of events—is to describe the strictures on State aid to these nonpublic schools, to describe them as a political phenomenon of the mid and late 19th century, associated with class and religious prejudice, which is not unusual in our society, which was cloaked in constitutional arguments, and retrospectively invoked the Founding Fathers to do something, there is no evidence this was what the Founding Fathers meant at all. We do not hesitate to think that *Plessy* v. *Ferguson* had something to do with the fact that a lot of people in this country were antiblack at the time.

There are a lot of people in this country just as anti-Catholic, or more so. The Ku Klux Klan did not——

Mr. Berns. Discriminate?

Senator Moynihan. Discriminate. It was against blacks, Catholics, and Jews, all absolutely, with equal vigor.

Senator Packwood. I might add the case that is often referred to, *Pierce* v. *the Society of Sisters* came out of Oregon. The Legislature in Oregon in the early twenties passed a law prohibiting private schools. You had to send children to public schools. By actual count at the time the Oregon Legislature had a majority of members of the Ku Klux Klan and the very philosophy you talked about was the initiating of that legislation, which fortunately the court struck down.

Senator Moynihan. I am prepared to say that people have a right to that view. I can see a good case saying there will only be public schools, but to say the Constitution requires it is another matter. To bring the Constitution to the aid of a sectarian position, it seems to me—I wonder if you don't have some sense of when this began, and am I generally correct—that this is a mid-19th century phenomenon associated with what we call nativism?

Mr. Berns. Yes, sir, I do think on this constitutional point it is exceedingly important for this committee perhaps to send someone over across the street and get the briefs and records of 330–U.S., whatever the particular citation of Everson is, because one of the things I discovered is that what now passes as a constitutional principle, this statement about neutrality that appears in Justice Black's opinion, comes from an amicus brief. The constitutional issue was not even briefed before this case got to the Supreme Court of the United States and in his opinion for the Court, Mr. Justice Black does not refer to the first amendment debates whatever. In his separate opinion, Justice Rutledge does. He cites parts of the footnotes but, of course, he picks that up from an amicus brief.

Now, I do not recommend to any committee of Congress that it model itself on Supreme Court fact gathering because there are occasions when the Supreme Court gathers facts from briefs and there is no constitutional requirement or legal requirement that a legal brief present the full arguments, and it would be interesting to go back—I meant to do it here but the briefs and record are not in the University of Toronto Law Library—we don't have them there.

Of course they are here and it would be interesting to see what passes as the constitutional principle finds its way into our law and into our consciences and into our press by way of less than ample statements.

Senator Moynihan. And I shall see that you get those briefs in Everson.

I just want to finish by asking you, I don't ask you to agree, I ask you to hear my very firm conviction that what we are dealing with in this matter is the residuum of the last great ugly prejudice of American society, that against immigrant Catholics?

Mr. BERN. Yes, sir. With respect to that, I see no possibility that this legislation will come close to raising religion above the subordinate position to which the Constitution consigns it, because it seems to me that the various churches today are more concerned with what they have in common than what separates them, and I cannot believe that aid to sectarian schools as a part of this tuition tax credit plan is going to threaten the tolerance that we have, I think, to a greater extent today enjoyed.

There is certainly much more tolerance today than there was in that period you are referring to, Senator Moynihan.

Senator MOYNIHAN. Mr. Scalia.

Mr. SCALIIA. In response to your previous question about when the development of bigotry began: As a lawyer, I have always been impressed with an isolated fact that many people are not aware of. We tend to think of the history of this country with respect to racial and religious prejudice as being an unbroken upward slant of progress. In fact, it doesn't take that pattern at all.

The Chief Justice of the United States who succeeded John Marshall, one of the earliest Chief Justices, was a devout Roman Catholic.

Senator MOYNIHAN. Taney?

Mr. SCALIA. Right. And I wonder what kind of stir that might have caused in the 1900's.

Senator MOYNIHAN. It would have been——

Mr. SCALA. The notion of a Catholic President, even in the sixties, was something quite new.

Senator MOYNIHAN. Here as in many other respects the idea of progress doesn't exactly fit the curve, doesn't show that.

I will take 1 minute of your time. Have you noticed. Mr. Scalia, the Washington Monument changes color about one-third of the way up?

Mr. SCALIA. I thought it was a little higher than that. Yes.

Senator MOYNIHAN. Do you happen to know why?

Mr. SCALIA. Yes, sir.

Senator MOYNIHAN. Do you want to tell us?

Mr. SCALIA. As I understand, it was left off during the Civil War because the trains and wagons to haul the granite, and maybe even the people to dig the granite, were used for different purposes. When they started again the granite didn't come from the same quarry.

Senator MOYNIHAN. I think I may have the better view of that. It was left off in the 1850's, on the occasion when the Pope gave a block of marble. This was a private association, the Washington National Monument Society, and if you walk up you will find that inside the blocks of marble are recorded who gave them.

Mr. BERNS. You have walked that?

Senator MOYNIHAN. Yes. Quite a bit of history. Well, in 1854, the Pope donated a block of marble to the monument. Before the block could be installed, as it was sitting in a shed beside the monument, there was an uprising of sorts. One night a group of people, widely believed at the time to be members of the "Know-Nothing" movement, broke into this shed and carted off the Pope's block. No one really knows just what happened to it—it seemed that it was taken to the Potomac River and broken up, perhaps. Well, the block almost certainly ended up in the river and, presumably, it is there to this day.

Well, this caused a scandal; it was in all the papers the next day, of course. As I said, the perpetrators of this crime were never really found, but it was widely believed to be the work of the "Know-Nothings," because they spoke out strongly against putting the marble block into the monument when it first came over from Rome.

Well, certainly this action—destroying this block—didn't put this group in good stead with the public. So when the "Know-Nothings" somehow gained control of the Washington National Monument Society—which was a private group that had been chartered to build the movement, with private funds—when the "Know-Nothings" gained control of this group, illegally, contributions slowed down to a trickle. Soon there was no money—the building had to stop. Finally, this group had to relinquish control of the society. Congress appropriated money, in 1859, and the monument was thereupon completed.

The Pope could have given a block of marble in 1810 and nobody would have noticed, isn't that your point?

Mr. Scalia. Yes; I think there was a shift somewhere, maybe in the 1840's or so.

Senator Moynihan. Just as an example of the most ugly, anti-immigration laws in this country which came in the 20th century.

Well, I have kept you long enough and I do thank you. That Washington Monument business is to my very best knowledge true and symptomatic of what it is we are dealing with, and the sooner we get this out into our past, the better.

Mr. Scalia. I am glad you disabused me of a piece of lore I was proud of and had been carrying around for years.

Senator Roth. Mr. Chairman, I will only take a couple more minutes of the committee's time.

First of all, for the benefit of the witnesses who are here this morning, I want to say that I regret that the federally run trains prevented me from being here on time. I regret it for basically two reasons.

No. 1, I would have very much liked to have been here and heard the same old line of the administration with respect to helping the middle class. I am outraged. I cannot believe that any responsible administration could come before this committee today and try to argue that the middle class does not need help in sending their children to college. The facts are just the opposite.

Mr. Chairman, I am going to take a few minutes of the time if I may, with your approval, this morning answering some of their allegations. I am outraged by this concept that the Congress is not an equal body in our trilateral form of government.

I could not believe my ears yesterday when the one professor came and told us that we were not being faithful to our oath by passing legislation that might run contrary to Supreme Court decisions.

Mr. Chairman, I think one of the most serious problems this country faces, this Congress faces, is putting back into proper balance the legislative functions with the courts.

We had Watergate where we saw the executive branch overreaching, overextending itself. And now we have the courts.

I don't know how many of you read U.S. News & World Report last week where it pointed out that the courts are, in the judgment of many, and certainly in my judgment, imposing their point of view on matters that rightfully belong to the elected Representatives of the Congress and State legislators.

I think for us not to have the courage to try to bring balance again into this picture shows that we are derelict and not living up to our responsibility.

That is something I intend to address in this Congress and would hope that my colleagues would join me. Although this is not the best time or place, I think in all seriousness the next confrontation is going to come between the courts and the legislative bodies.

I would like to ask you two questions. Perhaps they have been raised before.

Isn't it true that much of this—I have not gone back and reviewed it—but isn't it true the decisions regarding church-state relationship commenced in the thirties, and have now gone further and further in the direction of limiting and inhibiting the discretion of the Congress and State legislatures?

Mr. **Scalia**. Yes; I think it is fair to say that the more limiting decisions have come during that period.

I am not sure it would be fair to say that previously the Court had clearly held otherwise. The reason for the developments coming late may have been just that the cases arose late, that people didn't even think of challenging such things in earlier periods.

There was, however, a case—in fact I think the first Establishment Clause case—in 1899. It involved a grant by the Federal Government to a hospital run by nuns.

Senator **Moynihan**. The first case was 1895.

Mr. **Scalia**. The first Establishment Clause case. That grant was held not to violate the Establishment Clause.

Then there is, as I recall, a long gap in which there are no cases coming out either way and in spite of cases——

Senator **Moynihan**. I was recently with Bob Bowie, who told me how he was a lawyer in one of these early cases in the thirties. That is really prior to that period. There was considerable discretion then, whether because of lack of cases or other reasons, but it wasn't until the thirties and refinements since that we find ourselves in the very puzzling conflicting position where the freedom of the Congress is very narrowly limited.

I think this is a serious problem not only for this particular piece of legislation but generally speaking, and I think this is the thing we are going to have to address.

Mr. **Scalia**. One of the major reasons for that most recently, of course, is the Court's alteration of the doctrine of standing. The rule used to be that a Federal taxpayer had no basis for challenging the expenditure of Federal funds solely by reason of his status as a taxpayer. It is only in recent years that the courts have changed that and have said that—at least where your challenge is based upon the Establishment Clause—your mere status as a taxpayer gives you standing to challenge the expenditure. That has enabled cases to reach the Court which couldn't have gotten there before.

Mr. **Bern**. If I may on the point, the State cases today that would raise Establishment Clause questions would not have been regarded as raising Federal questions prior to *Cantwell* in the forties. That is another reason why these cases didn't come until this later period.

Incidentally, that *Bradford* case is 1899, *Bradford* v. *Roberts*, the hospital case here.

Senator **Roth**. Let me ask you this question. We have veterans rights that provide funds, starting, I think in World War II, and they have been continuing ever since, to assist former members of the Armed Services to go to schools of their choice, whether they are public, parochial, or religious schools or other types. Isn't that correct?

Mr. **Scalia**. Indeed seminaries. Some of the recipients of the GI bill went to seminaries.

Senator **Roth**. Why is that constitutional?

Mr. **Scalia**. It has never been challenged.

Senator **Roth**. Well, I think in a way, Mr. Chairman, this bears a point. I suppose politically, it would be unthinkable to strike the GI bill of rights down. What bothers me so much is that much of our so-called constitutional law depends upon what the judges want to pour into those very broad words in the Constitution.

Mr. **Scalia**. The point I was making is that, to a large extent—when you are dealing with an area where they are obviously groping, where their decisions are not consistent and where they are uncertain—what they choose to pour into it will be affected considerably by what you choose to pour into it. And that is why I think the responsibility of the Senate in this matter is even greater than it would be if there were a clear line of decisions either way.

Senator **Moynihan**. We adopted the first amendment and we ought to have something to say about what we intended by it.

Mr. **Berns**. I would like to strongly support that statement. This year I am teaching a seminar on the American Civil War, an idea I had because of Quebec's problems up there, and one of the things I do is read debates in the Senate. That is how I found this Calhoun statement. And one thing is certainly clear, Congressmen and Senators during that period did not hesitate to state opinions with respect to the Constitution of the United States.

Senator **Roth**. I just want to say I couldn't agree with you more. I think one of the most important issues for this Congress, this Senate, the individual Senators, is to begin reasserting the responsibility of the Congress, and not like many would have us do, to lie back and let an unelected group become the primary legislative body.

Mr. **Berns**. I have a feeling you will save the members of the Court or further members of the Court further embarrassment. The latest case, woman, these men can find a constitutional difference between a textbook to a school student and a globe to a school student. The first amendment speaks to that question and yet the Court divided on that.

Mr. **Scalia**. It is absurd, of course.

Senator **Roth**. Thank you, Mr. Chairman, and thank you for your helpful testimony.

Senator **Packwood**. Yes, thank you very much.

[The prepared statements of the preceding panel and also a letter to Senator Packwood follow:]

STATEMENT OF ANTONIN SCALIA

I appreciate the opportunity of appearing before you today, to address the constitutional aspects of S. 2142. I will not take much of your time—party because you have wisely not agreed to give me much of it, and partly because the message I have to convey is brief.

It is my understanding that this Committee has not often had to grapple, as others have, wtih the possible impediments to legislation posed by the freedom of religion clause and the establishment clause of the First Amendment. If that is so you will be surprise, I expect, by the barrage of categorical assertions you receive on both sides of the issue—that the proposal before you, insofar as it provides tax relief for tuition payments to sectarian schools, clearly should be, or clearly should not be, regarded as constitutional. I side with the former camp myself, but that is not primarily what I want to talk to you about. The principal point I want to make is that, regardless of how one feels about the "shoulds" of the matter, the issue has not been resolved by any holding, or even by any consistent line of dictum, from the Supreme Court. And for that reason, the responsibility which rests upon you is all the greater.

In approving or disapproving the present proposal on constitutional grounds, you will not be following—and cannot pretend to be following—any dictate of the Supreme Court, but will rather be expressing your sense, and the sense of the society, as to what our most profound national convictions require. Your expression, in turn, can be expected to influence the course which the Supreme Court will steer in the future.

It is impossible, within the time allotted, to describe with any completeness the utter confusion of Supreme Court pronouncements in the church-state area, but a few examples may bring home the point. The Court has not been consistent even on the fundamental question of whether the constitutional prohibition against establishment of religion forbids merely the preference of one religion over another, or rather prevents any special governmental favors to religion in general. In 1947, the Court said that the First Amendment "requires the state to be a neutral in its relations with groups of religious believers and non-believers; * * * State power is no more to be used so as to handicap religions than it is to favor them." *Everson* v. *Board of Education*, 330 U.S. 1, 14–15 (1947). Five years later it had changed its mind, and wrote the following oft-quoted passage:

> We are a religious people whose institutions presuppose a Supreme Being. * * * When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. * * * The government must be neutral when it comes to competition between sects.
>
> * * * But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. *Zorach* v. *Clauson*, 343 U.S. 306, 313–14 (1952).

Since then, the Courts's expression of basic First Amendment philosophy has changed yet again, reverting to the principle that religion in general can be neither favored nor disfavored. See, *e.g.*, *Abington School District* v. *Schempp*, 374 U.S. 203 (1963). These dicta, however, are impossible to square with the Court's decision—which have, for example, prevented the State of Wisconsin from compelling Amish parents to send their children to school beyond the eighth grade (an exemption which the State would not be compelled to grant those who demand it for nonreligious reasons) *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972); and prevented the State of South Carolina from withholding unemployment compensation from a Seventh Day Adventist who refused to accept employment that required Saturday work (again a special privilege accorded only to religion) *Sherbert* v. *Verner*, 374 U.S. 398 (1963). Of course even the "neutrality" principle would support (indeed, require) the inclusion of sectarian school tuition payments in the benefits accorded by the present bill—but I raise the issue merely to demonstrate how inconclusive the Supreme Court's pronouncements are, even with regard to the fundamental philosophy of the First Amendment.

If one wishes to examine the specifics of Supreme Court holdings, confusion still abounds. The Court has, for example, approved state provision of bus transportation to and from school for parochial school students, *Everson* v. *Board of Education*, 330 U.S. 1 (1947), but has disapproved provision of transportation to and from field trips, *Wolman* v. *Walter*, 97 S. Ct. 2593 (1977); it has approved state provision of textbooks for use in sectarian schools, *Board of Education* v. *Allen*, 392 U.S. 236 (1968), and *Meek* v. *Pittenger*, 421 U.S. 349 (1975), but has disapproved provision of other instructional materials and equipment, *Wolman* v. *Walter*, *supra;* it has sustained state exemption of churches and places of worship from property taxes, *Walz* v. *Tax Commission*, 397 U.S. 664 (1970), but has, in certain circumstances, stricken down state income tax remission for tuition payments to sectarian schools, *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973). (I will have more to say of that case shortly.)

There is, to be sure, no dearth of Supreme Court expressions of the principles which are to govern the decision in cases of this sort. And the principles sound fine in the abstract. The currently favored formulation is the so-called "three-pronged test" enunciated in *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971).

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion * * *; finally, the statute must not foster "an excessive government entanglement with religion."

The trouble is, that when held next to the bewildering diversity of results which the Court has reached, these tests, like those that preceded them, are revealed to be less tools of analysis than convenient bases for rationalizing results reached in some other fashion—convenient, because they may be applied strictly or liberally, rigidly adhered to or virtually ignored, in order to support the outcome. The situation has not changed since 1963, when Mr. Justice Stewart bemoaned as follows the sorry state of First Amendment case law:

> [S]o long as the resounding but fallacious fundamentalist rhetoric of some of our establishment clause opinions remains on our books, to be disregarded at will as in the present case, or to be undiscriminatingly invoked as in [*Abington School District* v. *Schempp*, *supra*], so long will the possibility of consistent and perceptive decision in this most difficult and delicate area of constitutional law be impeded and impaired. And so long, I fear, will the guarantee of true religious freedom in our pluralistic society be uncertain and insecure. *Sherbert* v. *Verner*, *supra*, at 416–17 (concurring opinion).

I want to say a few words in particular about two Supreme Court cases, *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973) and *Sloan* v. *Lemon*, 413 U.S. 825 (1973), because they are the opinions most likely to be cited by the opponents of this legislation as demonstrating its unconstitutionality. These cases involved (and struck down) tuition tax reimbursement programs, by New York and Pennsylvania, respectively, similar in their technical structure to the present bill. But there the similarity ends.

Both New York and Pennsylvania had a history, prior to enactment of the laws in question, of unsuccessful attempts to subsidize directly their extensive sectarian (overwhelmingly Catholic) school systems; the legislative histories and even the texts of the tax provisions indicated that this was still their purpose; and the vast majority of the funds involved would in fact reimburse only sectarian (and primarily Catholic) school tuitions. That is a far cry from the state of facts underlying the present bill, whose benefits will not be conferred almost entirely upon those who attend sectarian schools, but will be spread broadly over the entire population. The very opinion in *Nyquist* suggests that incidental aid to those attending sectarian schools, in connection with a more broadly based program, may occupy a different constitutional status. 413 U.S. at 794. Nor is the present bill designed to perpetuate particular school systems. Many of the Senators who support it have in fact no extensive private school systems, sectarian or nonsectarian, within their states. What motivates them—and what will motivate the Congress if it passes this bill—is not a commitment to the preservation of a particular school system, but belief in the fairness and desirability of providing tax relief and financial assistance to those whose real incomes are reduced by educational expenses, wherever paid; and a conviction that, unless such relief is provided, the treasured freedom to obtain the education of one's choice—outside the state schools if one wishes—will for most Americans be an illusion.

And a final distinction, perhaps the most critical, between the present bill and the laws struck down in *Nyquist* and *Sloan*, is that here we are talking about a federal law. It is unquestionable that the Supreme Court—in this field even more than in most—is more disposed to accord validity to the acts of this Congress than to those of State legislatures. Compare *Lemon* v. *Kurtzman*, 403

U.S. 602 (1971) with *Tilton* v. *Richardson*, 403 U.S. 672 (1971). To my knowledge, only one minor feature of any federal aid-to-education provision has been invalidated on establishment clause grounds. See *Tilton* v. *Richardson*, 403 U.S. 672, 682–84 (1971). The reasons for that are sound—and much more understandable than such elastic abstractions as the "three-pronged test" which pass for the "principles" of first amendment adjudication. In the individual States, where, not infrequently, a single denomination accounts for a majority or a near majority of the electorate, the danger that the legislature will aid a particular religion under the guise of pursuing purely secular, governmental ends is sometimes acute, and justifies particularly rigorous application of anti-establishment principles, even at the expense of other constitutional values which might otherwise predominate. In the national legislature, by contrast, no single religious sect predominates, and the danger of sectarian action in favor of a particular group is negligible.

But this detailed discussion of *Nyquist* and *Sloan* is in digression from (and even in disregard of) my principal point—which is that the decisions of the Supreme Court in this area of governmental aid to religion in general and to sectarian education in particular have little to tell you. However neat their formulation of principles may appear (and even this changes every decade), their decisions conform neither to any consistent interpretation of those principles nor to one another. Now, there is a large body of men and women to which I belong, called "lawyers," who, for our sins, must analyze and seek to reconcile, however artificially, all the decisions and all the pronouncements of the Supreme Court—and even to identify the particular constitutional philosophies of the individual justices, so that we can predict (in an area such as this, where the Court frequently splits into two, or three, or even four groups of varying composition) how many votes will be for affirmance and how many for reversal in the next case. That is fine, I suggest, for us lawyers; it keeps us, perhaps, from greater mischief. But for the representatives of the people to proceed in this fashion in determining whether or not a particular proposal before them is in accord with the fundamental principles of our Nation; for the Senate of the United States to dissect cases and hang on every stray judicial dictum in a body of opinions which is notoriously unclear and indeed contradictory; that, I suggest, would be grotesque. And it would display, I think, not so much a fine regard for the Constitution as a failure to appreciate the role of this body in the development of constitutional law.

This area of church-state relations in an era when the government has become deeply involved in every aspect of human life—and when many activities, including education, can no longer feasibly be conducted without governmental assistance in some form—this area resembles in many respects that of civil rights, where the Court has taken guidance from the Congress as to what the fundamental beliefs and aspirations of our people require.

I urge you, then, to approach this issue as a question of what the constitutional law "should be," rather than vainly seeking to determine what it "is" under the decisions of the Court. For me, the answer to that question seems quite clear. There is no dobut, of course, that the tuition tax relief provided by this legislation is constitutional as applied to parents and students paying tuition to nonreligious private schools. Is it conceivable that in this country—as opposed, let us say, to Hungary—it is not only proper, but necessary to single out for special discrimination those parents who choose to follow the long American tradition of religious schooling? Must the income tax deduction for charitable contributions be similarly limited, so that only contributions to religious organizations do not qualify? You must ask yourselves whether the special solicitude for religion contained in the Constitution was meant to produce such a distinctively anti-religious result.

STATEMENT OF WALTER BERNS, PROFESSOR OF POLITICAL SCIENCE, UNIVERSITY OF TORONTO

Doubts concerning the constitutionality of S. 2142, the proposed Tuition Tax Credit Act, derive from the opinion that the First Amendment requires the Congress (and the states) to be neutral between religion and irreligion. This is erroneous. The source of the error is to be found in the 1947 case, *Everson* v. *Board of Education*, involving a New Jersey statute authorizing school districts to reimburse parents for bus fares paid by their children traveling to and from schools. The Supreme Court said that the Establishment Clause of the First Amendment meant that neither Congress nor a State legislature may "pass laws which aid one religion, aid all religions, or prefer one religion over another." Nor may any tax "in any amount, large or small . . . be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."[1] Although the Court has seen fit to ignore this principle on occasion,[2] the *Everson* principle of neutrality between religion and irreligion is cited time and again and its validity is acknowledged in principle by most members of the Court. But, to repeat it is erroneous; it does not accurately state the intent of the First Amendment.

As I pointed out in *The First Amendment and the Future of American Democracy*, in his opinion for the Court in *Everson*, Justice Black simply relied on Jefferson's metaphorical wall between church and State, which made its first appearance in an 1802 letter to the Danbury Baptists, and on Madison's "Memorial and Remonstrance," written during one stage of the Virginia disestablishment struggle; he did not even refer to the debates in the first Congress on the First Amendment. In his separate opinion in *Everson*, Justice Rutledge referred to the debates, but rendered a disservice to the Constitution and the country by accepting as historically accurate the account of the debates presented in briefs filed by the appellee and an *amicus curiae*.[3] In this fashion was born the legend that the First Amendment embodies in all respects the views on church and state expressed in other contexts by Jefferson and Madison.

Thus, Black found that it was the "feelings" of the Virginians which "found expression in the First Amendment," and that the First Amendment "had the same objective and was intended to provide the same protection against governmental intrusion on religious liberty as the Virginia statute;" and Rutledge, who dissented because he thought the busing scheme unconstitutional, said the purpose of the Amendment "was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion." The Virginia experience and Madison's "Memorial and Remonstrance" provided "irrefutable confirmation of the Amendment's sweeping content." In this fashion, then, in this first and decisive case, the Virginians became not merely the principal but the sole authors of the religous provisions of the First Amendment.[4]

As the late Mark De Wolfe Howe of the Harvard Law School put it, in *Everson* the justices made "the historically quite misleading assumption that the same considerations which moved Jefferson and Madison to favor separation of church and state in Virginia led the nation to demand the religious clauses of the First Amendment."[5] This, he wrote, was a "gravely distorted picture."

It was distorted because it was a partial picture. The men of the First Congress surely wanted a separation of church and State, but, as Professor Howe showed, not all of them wanted it for Madison's reasons; what is more, as I showed, not all of them wanted a complete separation. (Of the Americans of his time Madison was, with the exception of Tom Paine, the most radical on the church-state issue.) They recognized that the churches performed a public, or secular, service, and they favored public support of these private institutions to enable them to perform that public or secular service.

Some members of the First Congress wanted to avoid a formulation of the Amendment that would forbid State laws *requiring* contributions in support of ministers of religion and places of worship; stated otherwise, they favored public support of ministers and places of worship. Other members sought to avoid any formulation that might "patronize those who professed no religion at all."

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[1] *Everson* v. *Board of Education*, 330 U.S. 1, 15, 16 (1947). Italics supplied.

[2] In 1970, for example, the Court upheld tax exemptions granted to church properties, even properties used for worshipping purposes. (*Walz* v. *Tax Commission*, 397 U.S. 664 [1970].) The following year it upheld the Higher Education Facilities Act, according to which federal "brick and mortar" grants are made to church-related colleges, among others. (*Tilton* v. *Richardson*, 403 U.S. 603 [1971].) In 1976, a bare majority of the Court permitted Maryland to provide noncategorical grants to private colleges—"subject only to the restrictions that the funds not be used for 'sectarian purposes.'" (*Roemer* v. *Board of Public Works*, 96 S. Ct. 2337 [1976].)

[3] Walter Berns, "The First Amendment and the Future of American Democracy" (New York: Basic Books, 1976), pp. 58, 72.

[4] *Ibid.*, p. 58. Footnotes omitted.

[5] Mark DeWolfe Howe, "The Garden and the Wilderness: Religion and Government in American Constitutional History" (Chicago: The University of Chicago Press, 1967), p. 172.

Still others wanted merely to forbid laws "establishing one religious sect or society in preference to others." What is instructive in this context is the extent to which Madison was forced to modify his views in order to get an agreement on the form of the Amendment. For example, the House debate began on the Select Committee's version of the Amendment, which read as follows: "No religion shall be established by law, nor shall the equal rights of conscience be infringed." The debate was opened by Peter Sylvester of New York, who objected to this formulation because "it might be thought to have a tendency to abolish religion altogether." So to construe the clause seems unnecessarily apprehensive—unless Sylvester had reason to believe that to forbid the establishment of religion by law would be to forbid all governmental assistance to religion, and that without this assistance religion would languish and eventually die. What is of interest in Madison's reply: "Mr. Madison said, he apprehended the meaning of the words to be, that Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience."[6]

It is on the basis of this record, rather than on the distorted version of the record that appears in the modern Supreme Court reports, that Joseph Story, in his great *Commentaries on the Constitution*, insisted that the First Amendment was not intended to require government to be neutral between religion and irreligion. "An attempt to level all religions, and to make it a matter of state policy to hold all in utter indifference, would have created universal disapprobation, if not universal indignation."[7] Story exaggerated if he meant to attribute this opinion to everyone, but the substance of what he said is accurate. "The historical record shows beyond peradventure that the core idea of 'an establishment of religion' comprises the idea of *preference;* and that any act of public authority favorable to religion in general cannot, without manifest falsification of history, be brought under the ban of that phrase."[8]

So said the late Edward S. Corwin, one of the most respected of our constitutional scholars. Properly applied, the First Amendment forbids a national church and any preference in the aid or recognition extended to religion; applied to the states by way of the Fourteenth Amendment, it forbids State churches and State preferences and, therefore, sectarian State schools. Whatever else it may forbid, there is nothing in the principle of the Amendment or in the reasons for the adoption of the Amendment to forbid indirect aid that has the effect of supporting religion without raising it above the subordinate position to which the principle consigns it. And, understood as the First Congress understood it, and as the great commentators of the past understood it, there is surely nothing in the First Amendment to forbid aid, direct or indirect, by nation or state, to nonpublic schools, including church-related schools. Whether that aid should be extended is not a constitutional question; it is a political question, and should be treated by the Congress as simply a political question.

With the First Amendment, the Founders intended to subordinate religion by consigning it to the private sphere or by relegating it to the care of private institutions; but there was a widesperad recognition that these private institutions deserved public support precisely because, insofar as they provided moral education, they performed a public service. Washington made this point in his Farewell Address:

> Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. . . . And let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle.

I would contend that an honest reading of the general condition of the country today would lead any fair-minded person to appreciate the importance—the *secular* importance, or what Washington would have called the political importance—of the moral education provided by church-related schools. As I put it in my recent book on the First Amendment:

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[6] "Annals of Congress," vol. 1, p. 758 (Aug. 15, 1789). See Berns, "The First Amendment and the Future of American Democracy," ch. 1.

[7] Story, "Commentaries on the Constitution," vol. 2, sec. 1874.

[8] Edward S. Corwin, "A Constitution of Powers in a Secular State" (Charlottesville, Va., Mitchie Co., 1951), p. 116).

> No doubt there would be a problem if these schools, after the fashion of the Communist Party, taught the necessity of overthrowing constitutional government in the United States, or, after the fashion of the Ku Klux Klan, bred hatred of Jews and Negroes; and no doubt there would be a problem if they were administered by churches that did not accept the constitutional principle of religious tolerance and all that this implies. But assuming, as the evidence suggests we must, that nothing comparable to any of these lessons is taught in them today, the question should be asked whether it is good or bad for the United States for children to attend schools where, among other lessons, they are taught that it is right to honor their fathers and mothers and wrong to kill, commit adultery, steal, bear false witness, or covet their neighbors' possessions.[8]

In short, there are sound political reasons to support these private institutions, and, as I have indicated, there is no constitutional barrier to supporting them with tax credits.

In my opinion, there are also compelling political reasons for extending the same support to the private and secular colleges and universities. Their financial need is evident, and they, too, perform a public service. They do so by directly educating hundreds of thousands of young Americans, including a disproportionate number of those who go on to teach in the public institutions, and they have traditionally served these institutions by providing models of higher education properly understood.

HARVARD LAW SCHOOL,
Cambridge, Mass., December 21, 1977.

Hon. ROBERT PACKWOOD,
Hon. DANIEL PATRICK MOYNIHAN,
U.S. Senate,
Washington, D.C.

DEAR SENATORS PACKWOOD AND MOYNIHAN: I am pleased to respond to your invitation to comment on the constitutional validity of your bill to provide a limited income-tax credit for tuition payments to nonpublic elementary and high schools as well as colleges and universities. The constitutional issue relates, of course, to credits for tuition at church-related institutions.

On the basis of judicial authority, as you are quite aware, the credit for payments to church-related elementary and high schools is deemed to violate the First Amendment guarantee against establishment of religion. In 1971 the Supreme Court held that state reimbursement to such schools for the cost of teachers' salaries, textbooks and instructional materials in certain "secular" subjects was an infringement of the guarantee. *Lemon* v. *Kurtzman*, 403 U.S. 602. A primary purpose of the plan was necessarily to aid religion, in view of the permeating nature of the religious component in those schools; and an effort to separate the secular and religious components for the purpose of assessing the aid would only aggravate the constitutional problem by involving ("entangling") the state in the monitoring and classifying of instruction on religious lines. The decision was by an 8–1 majority, with Justice White dissenting. At the same time, the Court distinguished the case of state aid to church-related universities (apart from theological studies), on the ground that typically and presumptively institutions of higher learning were not engaged in religious indoctrination: their curriculum, faculty and students were less oriented in that direction and the institutions were generally indistinguishable from public and private non-church-affiliated universities. *Tilton* v. *Richardson*, 403 U.S. 672.

In an effort to escape from the condemnation of the *Kurtzman* decision, New York and other States devised a plan of reimbursement or tax deductions to parents, instead of payments to the schools themselves. It was thought that thereby the objection of "entanglement" would be avoided, and the considerations of pluralism in education and economic fairness to parochial-school families were spelled out in the statute and earnestly argued to the Court.

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[8] Berns, *op. cit.*, p. 73. I say this as someone in no way involved with these schools or with the church by which most of them are supported.

The Court saw no persuasive reason to distinguish its earlier decision, and held the parental reimbursement and tax deduction provisions invalid. The purpose and effect remained the same; and while administrative supervision was avoided in the new law, the prospect of political entanglement of church and state persisted, in that the program was open-ended and would invite an ongoing political struggle for tax benefits along lines of proprietary and institutional claims of religious societies, a kind of church-state involvement that would be at odds with the First Amendment. The decision was 8 to 1 (White, J. dissenting) on reimbursement to low-income parents, and 6 to 3 on tuition deductions for more affluent parents, scaled inversely to the gross income of the taxpayer. (White and Rehnquist, JJ., and Burger, C.J., dissented.) *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973). To the same effect is *Sloan* v. *Lemon*, 413 U.S. 825 (1973) (Pennsylvania Parent Reimbursement Act).

In the light of these decisions, reached after full argument and a rich outpouring of scholarly writing on the subject, it is difficult to see how a federal tax credit could survive. Indeed, the more unstable position appears to be the distinction in favor of institutions of higher learning. In a recent decision the distinction was maintained only by a 5–4 vote, with Justices Brennan, Marshall, Stewart and Stevens dissenting. *Roemer* v. *Maryland Public Works Bd.*, 426 U.S. 736 (1976) (grants to colleges and universities for non-sectarian purposes). While it may be true that a question of constitutional law is never settled until it is settled right, the conferring of a tax benefit that is interdicted by recent controlling decisions would seem to present a trap for taxpayers, who would be subject to deficiency assessments upon the invalidation of the credits.

I confess that as an original question I support the Court's decisions in the cases cited above. I argued to that effect in an article published before the decisions of 1971. "Public Aid to Parochial Schools", 82 Harvard Law Review 1680 (1969), a copy of which is enclosed.

A brief look at certain counter-arguments may be useful. On the historical side, the argument that the non-establishment guarantee prohibits only preferential aid has been consistently rejected. Madison's Remonstrance against the Virginia Assessment Bill was not muted because the Bill would have allowed each taxpayer to designate the religious society he wished to aid; whether the Remonstrance furnished the philosophical basis for the First Amendment, and whether the non-establishment clause is incorporated in the Fourteenth, are questions on which it is unlikely that further light can be shed.

On the practical side, it is argued that it is unfair to tax parochial-school families for the support of facilities they do not use, on religious grounds. But if religious indoctrination is indeed a main reason for choosing these schools, then public aid for this aspect of their mission would in fairness entail public aid for, say, Baptist Sunday-school education, which corresponds to an inseparable part of parochial-school education.

To be sure, churches are validly given an exemption from local property taxes. *Walz* v. *Tax Commission*, 397 U.S. 664 (1970). But symbolically, this is an affirmation that just as the state may not support the church, so the church may not be made to support the state. And practically, the property-tax exemption has a fixed ceiling and is not the subject of open-ended conflict or bargaining between church and state, but is on the contrary a principle of peace.

Finally, it is true that tax-deductible charitable contributions may include gifts to churches. But here the class of deductions is an extensive one, so that the focus is not on religious charities. By diffusing the benefit, there is a defusing of the church-state involvement. If this is to furnish a precedent, it would be a tax deduction or credit for all forms of parental expenses to further a child's education: music lessons, foreign-language instruction, athletic coaching, etc. This presents an open question, unlike a credit limited to tuition. Whether it would in any event be too great a drain on the revenues, and whether it would predominantly benefit the more affluent, are issues that would have to be faced apart from the constitutional one.

Sincerely,

PAUL A. FREUND.

Senator PACKWOOD. We will take this panel and then we will break for lunch, and the time we come back will depend on what time we break for lunch.

We have Edd Doerr, Florence Flast, James Wood, Carolyn Balleisen, and Mr. Andrew Gunn.

I will leave it to you as to who is going to speak first and choose the order you wish to appear in.

STATEMENT OF EDD DOERR, EDITOR, CHURCH AND STATE

Mr. **Doerr**. Mr. Chairman, my name is Edd Doerr. I am a member of the executive committee of the National Coalition for Public Education and Religious Liberty. Since one of the members of our panel has a plane to catch rather soon, I would like to let Ms. Balleisen go first. Then, we will take the rest in the order in which they are listed.

STATEMENT OF MARIE ABRAMS, NATIONAL COUNCIL OF JEWISH WOMEN

Ms. **Abrams**. Thank you. I am not Ms. Balleisen. I am Marie Abrams, but I am representing the National Council of Jewish Women and I am a national board member and vice chairwoman of the National Affairs Committee.

I have a statement which I would like to enter in the record and summarize very briefly a couple of points for you and then slip out.

I am from Louisville, Ky., which today is more famous for 20 inches of snow than the Kentucky Derby.

Senator **Packwood**. Go right ahead.

Ms. **Abrams**. Thank you.

We have several points, many of which I believe will be covered by my distinguished colleagues on this panel, but I would like to talk about the fact that we believe the proposed tax credit will in effect siphon off public revenue and further potentially weaken our public schools.

We believe that free public education is the heart of our American democracy. That is, school systems now throughout the country are in deep financial trouble and indeed in need of public support and public financial support. We are not and have not ever taken the position of opposition to parochial school systems, nor do we wish to see, Senator Moynihan, the destruction of parochial school systems.

We are indeed concerned, however, that the public school system, at least in many communities, is in danger of destruction. And I would like to suggest to you that, for example, my community is faced with the problem of closing schools because of declining enrollment, which has to do with declining base of students from a declining birth rate, but also because of patrons who have left the school system because of desegregation, that I am concerned that had this bill been in effect 2 years ago when the court ordered my community to desegregate, that it would have made it indeed not only possible but perhaps much more attractive for segregation academies to have opened their doors.

I am not concerned that parochial schools are supported, but I am concerned that anyone who would happen at any particular moment, for whatever the reasons, to disagree with the public school system would find it very easy to remove students from it. At least in my community, and I believe in many others, public schools are supported on the basis of numbers of students who are in the classrooms. I would further like to make one additional point and I will run. That is: The cost, cost in tax dollars, I have heard the statement of up to $5 billion, and I am not an economist so I do not know how much it is, but we believe that there are indeed pressing needs for tax dollars now in addition to public education. I would mention some of the ones that you all are going to be wrestling with in this Congress—welfare reform, health insurance, employment legislation, and we have some concerns where those moneys are coming from, if indeed this is going to be that kind of a cost in this budget.

And I thank you for allowing me to slip in.

Senator MOYNIHAN. Good luck.

Senator PACKWOOD. I can tell we would all love to ask you questions extensively but we will restrain ourselves.

Ms. ABRAMS. I can answer for a few minutes. I figure I have 10 minutes until I have to slip out, and if you would like me to answer for 10 minutes, I will try.

Senator PACKWOOD. What I would like to do is take the rest of the panel, if we can, and I know you have to go. I think we are going to keep this panel here an extensive length of time, and I think I can assure you every point you have raised will not be overlooked by us in questioning the panel.

Ms. ABRAMS. Thank you and I appreciate it. I will leave with friends on the panel some copies of the testimony.

Senator MOYNIHAN. I know it is a concern of yours. May I say we will take up this question, this very legitimate concern about screwball schools and segregation academies. We are very conscious of that and we think our legislation deals with it very carefully.

You will have to read the record.

Ms. ABRAMS. Thank you.

Mr. DOERR. Mr. Chairman, the National Coalition for Public Education and Religious Liberty represents 30 religious, educational, and civil liberties organizations with an aggregate membership on the order of 40 million people.

Since my statement is going in the record I will not bother to read it but rather to comment on several issues before us today. I am sure the rest of the panel will have numerous points to raise.

We believe in preserving the principle of religious liberty which is undergirded by the first amendment principle of separation of church and state. We believe in maintaining the integrity and viability of public education, and I assure you we have not the slightest prejudice of any kind, 19th or 20th century, or any other, against denominational schools or the denominations which operate these schools.

A large segment of the membership of our organizations are members of churches which operate these schools.

I might also say that I speak for probably every member of the panel in saying that each of us individually and a great many of our members could personally benefit from the passage of this bill, S. 2142, but we oppose it for a variety of reasons.

We of course completely endorse the position taken yesterday by our general counsel, Dr. Leo Pfeffer, as to the constitutionality of this bill. We are quite persuaded by his arguments and quite unpersuaded by the others we have heard to the contrary.

I would like to clarify one slight point which I believe was under discussion excessively long yesterday: that is, the distinction between a tax deduction for a donation to a religious organization, a charity or an educational institution, on the one hand, and a tax credit or even a deduction for tuition on the other.

The IRS has no difficulty distinguishing between the two. If I make a $100 contribution to my church, it is deductible. If I pay $100 to the same church for tuition for one of my children, it is not deductible. If I break my arm and I go to Holy Cross Hospital and pay them $100 to set my arm and put a cast on it, it is not deductible unless my medical expenses exceed a certain percentage of my income.

But, if out of the goodness of my heart, I donate $100 to Holy Cross Hospital, it is deductible. IRS has no difficulty distinguishing that.

We have no problem with existing deductions, which the Supreme Court seems to have no trouble with. We are only troubled by tax credits which, in effect, would provide public subsidy for denominational education on any level.

Senator **Packwood**. I think the question I asked Professor Pfeffer yesterday was that if you can make a $100 contribution to your church and on the same Sunday they passed the basket again and say now, "We want you to make a contribution for the support of the parochial school," and you put the $100 in the basket, IRS still says that is deductible.

Mr. **Doerr**. That is correct.

The difference between that and the tax credit is that the donation made in general to the school is made whether you have a child who benefits specifically or not. The tuition payment is a payment for services rendered. You receive a direct benefit from that. You are buying something with tuition, presumably. That is the difference between a disinterested donation to something you believe in and paying for something that you are receiving or that you expect to receive.

To go on, one item which has not been discussed at all in this day and a half of hearings is what the people of this country think. We know what political platforms say and we know how much political platforms are worth in the long run. But the people of either party, the people of this country have been heard on this issue.

They have been heard repeatedly in the last decade. We have had 10 referendum elections in the last decade directly pertinent to the issue before us.

In Senator Moynihan's State of New York, 10 years ago, there was a fierce controversy over a proposed new constitution for the State of New York, and the most controversial aspect of it—and I wrote a book about it so I am somewhat familiar with it—concerned changing the constitution to permit the State legislature to provide some form of tax aid to denominational schools. That was the hottest subject in New York in 1967.

When the votes were counted on the constitution, however, 72.5 percent of the people, of the voters of New York, rejected that proposed constitution, the most controversial feature of which was the provision to permit tax aid for denominational schools.

Since New York is approximately 41 percent Roman Catholic, it is apparent that a considerable portion of the Catholic voters of New York State also voted against the position taken by the hierarchy of their church, but, of course, as Father Greeley will tell you, there is nothing monolithic about the Catholic Church at all. Catholic voters do as they please.

Senator Packwood, in your State of Oregon in 1972 the people had an opportunity to vote on a proposal to change your State constitution to permit unspecified aid to nonpublic schools. This was rejected by a vote of 61 percent to 39 percent.

Those are just two referendum elections. There have been others in Michigan, Nebraska, Idaho, and my home State of Maryland, where I was chairman of the campaign committee to defeat proposals to aid nonpublic schools, in Washington State, just 2 years ago, and in 1976 in Missouri and Alaska. The people have consistently said they do not want to change their State constitutions. They do not wish to be taxed directly or indirectly for the support of nonpublic schools, that is, on the elementary and secondary level.

In the last 3 years alone we have had referendums on the subject of tax aid or State aid for nonpublic colleges in Washington State, Nebraska, and Alaska. In these 3 States the people again voted no.

So, there are no public opinion polls which contradict these referendum results, and these are the people voting directly on the issue. That is what this Congress is supposed to be responsive to, the people, as well as the demands of the U.S. Constitution.

To make a couple of other points, I might say that the comparison between the GI bills and the tax credit legislation before us is rather simple. The GI bills were compensation to men and women for services rendered to their country. If you did not serve in the Armed Forces you did not get the GI bill. You were compensated for risking your life and limb for your country.

I do not think any of the organizations in our coalition would have the slightest question about a former GI using his GI bill to become a rabbi, a minister or a priest in a seminary. We have no problem with that.

We have heard comments about diversity. I am a product of parochial schools. I am a former teacher, having taught in both public and private schools. I am the father of children who have gone through school. I think I can safely say that the individual child experiences more diversity and pluralism in his education if he attends a public school than if he attends a nonpublic school, the vast majority of which tend to be rather homogeneous religiously.

By rather homogeneous, I mean in excess of 90 percent. Diversity means many things. It may mean diversity of schools. It may mean diversity of the experience the individual child may face in school.

Now, as for diversity of schools, if nonpublic schools are able to extend a pipeline into Fort Knox, so to speak, public concern will flow into those schools along with public dollars. And if public schools are not permitted to impose devotional activities or devotions or denominational instruction upon students, is it fair, is it right, that we should pay taxes to nonpublic schools which do these things?

Or, if we do, will it be not long before someone goes to court and tries to force a nonpublic school to give up doing what they do which is not permitted in a public school. In that case all the diversity which nonpublic schools claim would be sacrificed as they become nothing but pale carbon copies of public schools.

So, many of our members are concerned with retaining the religious and other distinctives of nonpublic schools, which they can retain only by not becoming addicted to public funds.

I think I will terminate at this point and pass to the next member of our coalition, Dr. John Baker.

STATEMENT OF DR. JOHN BAKER, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

I am John W. Baker. I am speaking here today for James E. Wood, who has had to be out of town.

We, incidentally, Senator, did ask 2 months ago for a specific time spot for these hearings. We are a member of the National PEARL but in speaking here today I am not speaking for PEARL; I am speaking for the Baptist Joint Committee on Public Affairs, which is made up of eight of the major black and white Baptist denominations in the country with a membership of approximately 27 million.

I assume the entire statement will be put into the record, so I shall skip through it.

It is instructive to sit here and hear lawyers argue. This is the way lawyers make money—when people disagree. We do not find nearly as complicated the decision of the Supreme Court vis-a-vis the separation of church and state, as do some of the speakers who appeared yesterday and today. But in any event, I shall skip our constitutional arguments and if you have any questions, I will be happy to respond.

I do want to talk in terms of why we are opposed to these bills on a public policy basis rather than on a constitutional basis.

I would agree, Senator Roth, that the Senate has to make its own determination on the basis of constitutionality.

But those people who are in the middle income brackets—and I consider myself to be that—are acutely conscious of the tax burden which we do bear. And those people—and again I am included—having a boy in the College of Wooster, a Presbyterian school in Ohio, and having one graduate there and one graduate from Oberlin and one going to college next year—have problems financially.

Senator MOYNIHAN. You are suffering from sibling overlap.

Dr. BAKER. Yes; this was not a phrase, Senator, that was coined at the time that we indulged in the activities that produced siblings and, therefore, we did not know the danger that we were getting ourselves into.

I do understand and feel the need for the help that you are talking about here and yet, at the same time, I feel it is incumbent upon me as a Baptist and a representative of these denominations to object to these bills on public policy grounds. Let me just summarize briefly what we have said. First of all, the tax relief provided for in these bills does harm and they give only a marginal amount of relief. The relief that is being given by these proposed bills in their various forms is largely psychological instead of real. In order to be a real help to me with a son in a school that charges thousands of dollars of tuition a year, instead of a $500 tax credit, it would have to be increased a substantial amount. The passage of the bill would open the door for divisive struggles to increase tax credits.

Even the income losses suffered by the Government under these bills being considered poses some threat, I think, to existing educational programs, and I will talk about that in a minute.

Second, I think in the public policy realm we must come to grips with the fact that tax expenditures, when those tax expenditures are made to support a specific program, are real money expenditures even though they do not appear as a line item in the budget.

They are real expenditures if they are geared to support a particular program, which these are, and I do not think we should make any bones over that.

Senator PACKWOOD. Just a question on that. On page 6, Dr. Wood says, "The use of tax expenditures for the purpose of supporting a specific program is per se undesirable policy."

Do you extend that to every tax expenditure that supports a program?

Dr. BAKER. Yes; I do think that use of tax expenditures for the purpose of supporting specific programs generally is not good use of funds. I think that the positive approach of money for a program where the decisions are made by Congress in setting up programs is a much better approach.

Senator PACKWOOD. Are you speaking now for the Baptist Joint Committee?

Dr. BAKER. I am speaking in answer to this question.

Senator PACKWOOD. On their behalf?

Dr. BAKER. They have not instructed me to say this. All that I have added is mine; it is undesirable policy.

Senator PACKWOOD. I want to know is what your philosophy is.

We allow a home owner to have a mortgage interest deduction and you would eliminate and instead have the Government send a direct proposition to the homeowner?

Dr. BAKER. As homeowner, I would hate to see you do it. I am not speaking for the Joint Committee on this matter. But I do not see that as a wise support of programs.

Senator PACKWOOD. On social security, the employer pays half of it and we do not tax the taxpayers for that. We never tax the taxpayer when they receive social security. You would tax them?

Dr. BAKER. I am lost here because the tax there is——

Senator PACKWOOD. I am talking about the employer part of it which is the half that the employer pays which is a tax expenditure which the employee only pays a tax when the employer pays it for them. They never pay a tax on it. It is a tax expenditure.

Dr. BAKER. It is a tax expenditure but I do pay my share of social security. I pay my half; the other is not taxed to me. I pay a tax on my share and I am taxed on the income I receive when I retire.

Senator PACKWOOD. You are not taxed on social security.

Dr. BAKER. No, not on social security.

Senator PACKWOOD. It is a tax expenditure. But that is a tax expenditure you support; you would not change that.

Dr. BAKER. I did not say I supported it.

Senator PACKWOOD. I will ask you a last one. We allow dependency for children. That is a tax expenditure. You would get rid of that?

Dr. BAKER. Again, I am talking for John Baker. My feeling basically in terms of tax reform is I would prefer to see a complete reworking and doing away even with the deductions for dependency allowance if you clear the board and set up a structure of progressive income tax based on income without all of these things that do work to the advantage of some people and work to the disadvantage of others.

Senator PACKWOOD. Your answer is very revealing and I think it comes right to the core of at least a difference you and I would have, and I will not speak for anybody else.

You would prefer every single thing that Government chooses to encourage be done by the process of appropriation, by the process of Government deciding after Congress acts to whom it is going to appropriate the money, what forms of regulation they are going to set up.

I would much prefer to do it by tax incentive whereby we draw a broad classification, allow the individual to choose to do it or not. That is a fundamental difference. And if you adhere to that position I can understand certainly why you are opposed to this bill.

Dr. BAKER. I think that this is a fundamental difference between you and me and I do not think there is a right answer or a wrong answer.

If I may proceed, the point I want to make is that in contacts with the Committee on the Budget, they have indicated that they see this as a setoff against other educational expenditures. If it is that, I consider this to be an unwise policy.

Then, we get to the one that the Senator called wearisome. Yet I think it is still important and not intellectually barren. The bills under consideration would give private elementary and secondary schools—an overwhelming majority of which are religious—a substantial advantage over public schools in recruiting and retaining students, and I fear that the public schools, because they must take everyone, would end up with the poor, with the children that are less desirable, or with the trouble makers that the private schools will not take.

I see this as a very real threat to the whole public school system and Baptists have traditionally supported the public school system.

The Baptist Joint Committee believes that the taxes are regressive and that they are inequitable. I will try to answer questions about that position more fully.

From the point of view of religious liberty and separation of church and State we oppose any tax credits which would directly or indirectly aid parochial schools and those colleges which are essentially a part of the religious mission of a church. On the basis of public policy considerations we must oppose all forms of tuition tax credits. Thus we urge that this subcommittee refuse to recommend any tuition tax credit bill to the full Finance Committee.

Senator PACKWOOD. Thank you.

STATEMENT OF FLORENCE FLAST, CHAIRMAN, NEW YORK PEARL

My name is Florence Flast. I am chairman of the Committee for Public Education and Religious Liberty (PEARL) which represents 36 major civic, religious, educational, civil rights, and labor organizations in New York State. We have submitted a written statement and I will just make a few brief remarks.

Our members believe strongly in the free public school system as a fundamental institution of our democracy, one in which children of all backgrounds and religious persuasions can learn together and develop respect for each other's values.

We are also deeply committed to the preservation of religious liberty guaranteed by our Federal and State constitutions. The separation of church and state is a uniquely American principle which has stood the test of over 200 years.

We believe that the proposed Tuition Tax Credit Act does violence to this principle. It provides a form of tuition grant to parents of children attending elementary and secondary schools, 95 percent of which are religiously affiliated and controlled.

Reference has been made to the *Nyquist* decision. It was a suit brought by New York PEARL. The Supreme Court stated that "Insofar as such (tax) benefits render assistance to parents who send their children to sectarian schools, their purpose and inevitable effect are to aid and advance those religious institutions."

Leo Pfeffer, counsel to PEARL, has presented to this committee on our behalf the constitutional arguments against this bill.

In our view the proposed legislation also represents a preferential form of governmental assistance to some religious institutions and not to others, aiding only those denominations which maintain full day schools. The parent who pays for religious instruction after school hours or on Sunday would not benefit.

Religious liberty in America means not only the right to pursue one's own beliefs, and the right to choose a religious education for one's children, but freedom from compulsory taxation to foster the religious beliefs of others. A parent has no more right to ask the Government to support the religious teachings of his children than to meet the deficits of his church which may result from diminished contributions.

The argument is made that those who send their children to private and parochial schools bear a double burden—paying tuition for services they receive and paying taxes to support public schools they do not use. But all citizens, whether parents or not, pay taxes to support public education, and all other governmentally provided services, whether they personally make use of them or not. That is the function of taxes. It is a dangerous idea to reimburse people for not using a public service. It forces on the majority the obligation to support the private choice of a minority and reduces the incentive for improving public services.

Denial of such aid does not affect parental rights, pluralism, or educational diversity.

The selective admissions and retention policies of nonpublic schools, by religion, academic achievement, and socioeconomic status, make them more elitist than pluralistic. Racial segregation is the all-too-frequent byproduct.

Senator Packwood has cited a number of cities with up to 30 percent enrollment in private and parochial schools and suggests that in these cities substantial financial relief for local taxpayers is realized because the private school attendance reduces the financial burden of the public schools.

The fact is that not only has the private and parochial school attendance in these cities exacerbated segregation in public schools, but the public schools are starved of operating funds. Public schools in Cleveland and other Ohio cities are reported in desperate financial straits; schools have had to close for weeks or months at a time. New York City's public schools closed for 90 minutes a week for a whole year and have cut back many services, as have Philadelphia's public schools.

None of this suggests benefits reaped from private school enrollment, except for the children in the private schools, who also benefit from State subsidies. Taxpayers have the power to vote down public school budgets, but not State or Federal appropriations for private and parochial schools.

It is also a myth that public schools represent an educational monopoly. They are independently controlled by 16,000 local lay boards of education, democratically selected, and are as diverse as the communities they serve.

They share in common one mandate from which private schools are exempt: they must operate within constitutional guidelines of nondiscrimination, academic freedom, due process, and the prohibition from engaging in religious or political indoctrination.

Tax credits for tuition would be a powerful incentive for a proliferation of private and parochial schools, splintering and polarizing our society; and would precipitate a vicious cycle of increased tuitions followed by increased pressures on Congress to raise the tax credit annually. The costs would be enormous; religious liberty, a myth; and public education slowly destroyed.

We urge you to reject this measure.

Senator PACKWOOD. Thank you.

Mr. Gunn?

STATEMENT OF ANDREW LEIGH GUNN, EXECUTIVE DIRECTOR, AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

Mr. GUNN. I am Andrew Leigh Gunn, the executive director of Americans United for Separation of Church and State. We are grateful to the committee for allowing us this opportunity to comment on this bill.

The president of Americans United for Separation of Church and State, the Reverend Calvin Didier, had hoped to be here to deliver this testimony, but he was the pastor of the late Senator Hubert Humphrey and he had the funeral to conduct and other serious matters prevented him from being here. So I have been chosen.

Before analyzing the bill, let me note that the estimates of its annual cost to the Federal Treasury, and thus to the American taxpayers, range from $4.7 billion to $6 billion. These are probably low estimates, in our judgment. Including vocational schools in the plan will undoubtedly add considerably to this bill.

In any event these are only startup costs. The bill invites increases in tuitions to take maximum advantage of the plan. In addition, this bill would lead to intense and increasing pressure on Congress to increase the percentage and amount of tuition reimbursements to higher and higher levels.

The eventual costs of the plan could easily reach several times the startup costs. In addition, the passage of this bill by Congress would unleash pressures upon State legislatures. In the long run the tuition reimbursement plan would cost the American taxpayers many, many billions of dollars per year.

Our objections to this bill, as applied to elementary and secondary schools, are as follows. This bill is unconstitutional, according to eminent constitutional lawyers. It gives tax aid and credits to parochial schools. The genesis and promotion of this bill represent a certain confluence of religious and political interests.

The National Catholic Report reported last summer that five Roman Catholic priests were involved in the preparation of this bill. The underlying purpose of this bill is to give aid to parochial schools. Denominational elementary and secondary school faculties, student bodies and curricula tend toward religious homogeneity.

This bill, by aiding such schools, which include at least 90 percent of the nonpublic school enrollment, would be Federal Government subsidization of sectarian division and divisiveness in education. The result of this could only be a decline in interfaith and community harmony.

According to the 1977 report of the National Center for Educational Statistics, 57 percent of the elementary public school parents earn less than $7,500 per year, in 1967 dollars, while only 34 percent of the nonpublic parents fall in that category. While 45 percent of the nonpublic elementary parents earn over $10,000 per year, only 25 percent of the public school parents are in that category.

On the secondary level, public school parents have a median income of $12,300, while nonpublic school parents have a median income of $15,962, which is 30 percent higher.

This bill, thus, would exclusively benefit nonpublic school parents who tend to be more affluent and provide no benefits whatever for generally less affluent public school parents. This bill, then, would help the wealthy at the expense of the average middle class American taxpayer.

By subsidizing nonpublic schools which tend to be religiously homogeneous and to serve proportionately fewer minorities and less affluent children, this bill would:

(A) Encourage the religious, ethnic, and class balkanization of American society and increase the centrifugal forces in society which have proven so destructive in other countries, such as Northern Ireland.

(B) It would weaken the competitive position of the democratic, religiously neutral, far more open schools which serve 90 percent of our children. This would gradually convert public schools into shrunken wastebaskets for poor, minority and handicapped students. The American dream of a great common school system would be shattered.

(C) It would reduce academic freedom and lessen the educational pluralism and adversity which the individual child is exposed to more in the public schools than in the nonpublic schools.

(D) This bill would be a boon to religious groups, some of them socalled religious cults, and they would form schools and zealously endeavor to capture the educational market. Acceptance of and dependence on tuition reimbursements and official aid would in the long run diminish the freedom and independence of private schools to pursue their religious and other special missions.

Public schools are ruled by boards elected by or responsible to all of the people, including those who patronize nonpublic schools. This bill would compel the public at large to support private and parochial schools in whose operation they would have no voice. Our ancestors fought a war for independence from taxation without representation.

Our objections to this bill in terms of higher education are as follows. As applied to the pervasively sectarian colleges, this bill is of questionable constitutionality, according to expert testimony. While the Supreme Court has applied the first amendment more loosely to colleges than to lower schools, it has not approved providing tax aid to pervasively sectarian colleges.

Should Americans pay higher taxes to help support colleges which could directly or indirectly exclude many of them from faculties or student bodies for religious reasons? Since public college tuitions are not only lower than private college tuitions but are generally also lower than the $1,000 level at which this bill would deliver its maximum benefit of $500 per student, the bill clearly favors private over public colleges.

Further, since, according to the 1977 report of the National Center for Educational Statistics, nonpublic colleges are able to spend 35 percent more per year per student than public colleges, this bill would preserve the advantaged position of nonpublic colleges in relationship to public institutions.

Public opinion, as measured in recent statewide referenda, opposes tax aid to denominational and other private colleges. In the three most most recent such referenda voters rejected proposed State constitutional amendments which would have permitted State aid to nonpublic colleges. Thy did so despite massive campaigns to sell the amendments to the voters.

Here are the results of the referenda. In the State of Washington, in 1975, 60.5 of the voters voted against an amendment that would have given public funds to sectarian colleges and institutions of higher education. Only 39.5 voted for it.

In Nebraska in 1976, 53 percent voted against it and 47 percent voted for it. In Alaska in 1976, 54 percent voted against it and 46 voted for it.

You have before you the written testimony. I will not read to you or give to you the objections we have as applied to vocational schools.

In conclusion, the inclusion of religious elementary and secondary schools and sectarian colleges among the beneficiaries of this bill is both unconstitutional and very unwise public policy. The built-in preference for private over public colleges is also unwise public policy. This bill should be modified to eliminate these imperfections.

Thank you.

Senator PACKWOOD. Mr. Moynihan?

Senator MOYNIHAN. Well, Mr. Chairman, I am sure you would share my impression, I am sure Senator Roth will, too. We have heard some very helpful and clearly stated testimony of a point of view different from our own but reasonably propounded and vigorously argued.

I did want to solely warn Mr. Wood that he is on a slippery slope. If he does not watch out he will find it can be proven he is against a progressive income tax as in fact a form of tax expenditure.

Mr. **Baker**. I was speaking for myself and not for Dr. Wood on that.

Senator **Moynihan**. The logic of that view is a flat levy, 6 percent.

Mr. **Baker**. Not necessarily, it would not have to be.

Senator **Moynihan**. You could have a good argument about that, but I follow you.

I want to say just not so much to ask questions but to make a simple observation and ask if you could hear us. We are trying to hear you.

Mr. Gunn, you spoke of the American dream of a great common school system?

Mr. **Gunn**. Yes, sir.

Senator **Moynihan**. You see, here we get into the struggles also that have been so much a part of American history, for the symbols of Americanism and for the symbols of legitimacy. And of course, there are those who had such a dream, and they are numerally dominant, far the largest portion of the people in this country.

This is an idea that came in our mid 19th century. Horace Mann came very much to be absorbed with the role of those schools in producing a homogenous America from the increasingly threatening diverse origins of people who no longer spoke English, people who were no longer Protestant, and sure there were those who had this dream, but not all Americans did.

There were Americans who had a dream of schools which were diverse and which were, in fact, sectarian and which would persist wrongmindedly in the perpetuation of Amish views on matters or Catholic or Lutheran and so forth. There were a diversity of dreams here.

Mr. **Gunn**. Yes, sir.

Senator **Moynihan**. All of us would wish to be able to claim for our own views that great imprimatur—My God, I have already revealed my position—the imprimatur of being an American.

Mr. **Gunn**. Yes, sir.

Senator **Moynihan**. But it is characteristic of us that it always eludes us. You hear me. I am only trying to say what I think.

Mr. **Gunn**. Yes; and I would say that Thomas Jefferson gave to us a basic position that in my judgment formed the basic idea of this country. When he said that you had all these different religious groups in this country and how were you going to deal with them. Were we all going to let them go their separate ways and force everyone to support these various religous groups? And he took the position that to force someone through taxation to pay for another man's religion or another man's religious institutions is both sinful and tyrannical. That was his position.

Senator **Packwood**. Could I interrupt there? Would it change your mind at all if I were to tell you Thomas Jefferson was a member of a city council that propositioned public moneys for church schools and voted in favor of it?

Mr. **Gunn**. It would not change my mind; no. All that I have read of Thomas Jefferson would say that maybe he did it on a very local basis, because there was a common nationality.

Senator **Packwood**. That is with local public funds?

Mr. **Gunn**. That is towards one particular. The established religion at the particular time was the Anglican Church in colonial Virginia. This was during colonial times or after the first amendment was passed?

Senator **Packwood**. With Jefferson it was before that. But if you take the entire history, and we have testimony after testimony, prior to the creation of the public school system in this country which at the earliest can be traced to about the 1820's and certainly the colonies were different. If there was any single background about the establishment of a colony, each one had some kind of religious difference back when they were started, but it was common in every colony to support these private schools, church schools.

Mr. **Gunn**. That is right.

Senator **Packwood**. That is with a variety of public taxes.

Mr. **Gunn**. This was the pattern that they had received from the old world.

Senator **Packwood**. They kept it before and after the Constitution.

Mr. **Gunn**. May I?

Senator **Moynihan**. The Old World was not a world of public schools.

Mr. **Gunn**. I know that.

Mr. **Baker**. May I respond here quickly on it and Ms. Flast wants to respond also.

The point simply is the first amendment, as I am sure you are aware, did not apply to the States.

Senator **Packwood**. I understand that exactly. It never did apply until the 14th amendment. All I am saying is the founders of this country who drew our Constitution never had in their minds that you could not use public moneys for church schools.

Now, if we can draw that out of the 14th amendment and say that later on, because we passed the 14th amendment right after the Civil War, we expanded. You can argue that, but do not try to say that our constitutional fathers expanded that.

Mr. **Baker**. First of all, I do not include Mr. Jefferson as a constitutional father. He was not there.

Senator **Packwood**. He was not at the convention?

Mr. **Baker**. That is right. But the point I think, is well taken. Sure, States did give financial aid to sectarian schools. The first amendment did not apply and, as a matter of fact, did not apply to them until the Court in *Cantwell* v. *Connecticut* in 1940.

I think you are perfectly correct they did see public aid to nonpublic schools as a perfectly legitimate function of the States and the communities. I would not be surprised to learn that Jefferson had voted—even after the first amendment had been added—for such a thing. He did not, but I would not have been surprised.

But the constitutional argument still is essentially the same under *Cantwell* v. *Connecticut*, whether you agree with what the Court said or not. As one of the Chief Justices said, "The Constitution is what the Supreme Court says it is."

It may change, as Mr. Moynihan has indicated, as different people are added to the Court. The Constitution itself is a dynamic thing, at least as far as the Court is concerned now.

The 14th amendment does make the first amendment applicable to the States and the States may not now give financial aid to parochial schools. Neither from the very beginning, can the Federal Government do this.

Senator MOYNIHAN. You wanted to say——

Mr. DOERR. We have in the last 2 days done a bit of discussing of the history of education. During the first half of the 19th century, the century opened basically with public schools only in New England, a basically religious education in the middle colonies and or States later and——

Senator MOYNIHAN. You would include New York? The first extensive system was in New York State.

Mr. DOERR. I am sorry.

Senator MOYNIHAN. The first extensive system was in New York State.

Mr. DOERR. The first which system?

Senator MOYNIHAN. That is extensive, a school in every neighborhood.

Mr. DOERR. Well, actually, probably Massachusetts would get the credit, beginning in about 1647.

Senator MOYNIHAN. Forgive me.

Mr. DOERR. Where the church and State were almost coterminous, that is. During the early 19th century more and more Americans of all faiths became convinced that private education was not getting the job done.

Senator MOYNIHAN. That is right.

Mr. DOERR. That is why public education developed. Horace Mann was only a manifestation of this and the second quarter of the 19th century was a large struggle over the development of the public school system and the churches, which had heretofore depended upon private education, basically got completely out of the private education business by the middle of the 19th century.

The only exceptions were the new German Lutheran schools and Roman Catholic schools and there were a lot of problems in that. As you pointed out yourself yesterday, the first fight over aid to sectarian schools was in New York City in the 1820's over a Baptist school. That was before there was a Catholic school in New York.

There was nativism, there was prejudice in the 19th century public schools. Catholic children were beaten and expelled for refusing to read the King James Bible. But Catholic Americans contributed importantly to the development of public schools by pressing constantly throughout the 19th century to make the schools religiously neutral for the 50 percent of the Catholic children who attended them and for the 75 percent of the Catholic children who attend public schools now.

Senator MOYNIHAN. Yes.

Mr. DOERR. If I may make one last comment. The struggle broke out in the 1840's in New York over the question of anti-Catholicism in public schools, objected to by Archbishop Hughes. The fight came to a head and finally the public school officials said, "Archbishop, please send over some of your people. We will sit down with you and you can show us what is wrong with the schools and we will clean them up to your satisfaction."

Archbishop Hughes made a terribly important decision not to cooperate but to push for a separate school system and this set the stage for the conflict that goes on today over aid to nonpublic schools.

Senator MOYNIHAN. I do not dispute you, I have no difference with a word you have just said. I do not expect you to agree with me and I want to get off this quickly. I am taking too much of the chairman's time. I do not expect you to accept my argument. The idea of this particular sanctity of the public schools is a political idea of the 19th century and a good idea, but it is not clothed with any constitutional origin. It is just an idea that came along and a lot of people agreed to it.

One thing I want to say, one last thing, and I want to say this as gently as I can to Mrs. Flast, I do feel, I said yesterday to you the Marxist interpretation is the problem of demystification in all of this. It is a curious thing that the last hold the Ku Klux Klan had on the American mind is in this area of prejudice which is so deep people do not even know they have it, like anti-Semitism a half century ago, particularly because the people who have had it particularly think of themselves as liberals.

Let me go back to one sentence you gave. You said:

> Public schools share in common only one mandate from which private schools are exempt, that is they must operate within constitutional guidelines of nondiscrimination in admissions and hiring practices, academic freedom, due process, equality of students, public accountability and the prohibition from engaging in religious or political indoctrinations.

Do you realize what it says, at least to me, when you stick academic freedom in there? It as much as says the Catholics are ruled by the Pope?

Mrs. FLAST. No.

Senator MOYNIHAN. It is awfully vulgar.

Mrs. FLAST. I am sorry.

Senator MOYNIHAN. I do not think you think it but it is a residuum of that strange preoccupation of American Protestantism and a certain kind of reformed Judiasm—reform represented by the Ethical Culture Society—and then those nice, dear, old socialists in the Workman's Circle.

I just want to say to you, I just offer you the thought, I do not expect you to accept it, and I give you all the time you like to reply——

Mrs. FLAST. Senator Moynihan, there is no prejudice expended in that remark. I think it is obvious that a public school system or any public service of whatever nature, supported by public funds, must operate within certain strictures established by the Government, must operate within constitutional strictures, legal strictures. To the extent that anything is private it is exempt from many of those strictures.

We happen to believe that those are valuable strictures imposed by Government, that they save our society, that they are good for society.

We also recognize if somebody is paying for something and owning it themselves, if they have a private swimming pool and they do not want their neighbors to swim in it, they have a perfect right to keep their neighbors out of it. But if it is a public pool, the public has a right to say this pool is open to everyone.

Senator **Moynihan.** May I just say, and I will leave off, I am wearing out the patience of my colleagues and yourself as well, I do not expect you to see it but there in your statement was the residuum of fundamental fear, the residuum of 19th century rationalism, which is those who argue from authority.

Mind you, in the Catholic Church, we have had some pretty dim Popes. We did not have any dimmer than we have in the middle 19th century and they invited an awful lot of this. Our ostracization of Thomas Aquinas and some of those other fellows, and I am telling you, antiblack feelings and anti-Semitic feelings, this is not something that preoccupies me, but it interests me professionally.

I can tell a nativist statement when I see one, and when you associate our schools with an absence of academic freedom, that is what it is all about.

Mrs. **Flast.** I did not say that any private school did not have any of these things operating in it. Some may, some may not. What I do say is Government cannot step in and make sure that these things are happening in any private institution.

Senator **Moynihan.** That is all you said. Thank you.

Senator **Roth.** I will try to be brief, Mr. Chairman.

As Pat Moynihan brought out, I think it is a difference in philosophy and I think the group here does make some interesting points. One of the things that bothers me the most is that it seems to me that what democracy is all about is freedom of choice.

You can talk about diversity within the schools, but I think one of our most valuable freedoms is the freedom to send our children to any type of school, whether it is a parochial or Lutheran or other school is unimportant. But families who want to send their children to private schools must also pay taxes to support the public schools, and in many cases, it is becoming almost impossible, particularly for those on the lower end of the economic scale, to have that choice, a real choice, of sending their children to a private school or a public school.

I am a product of the public school system, and my children go to public school. But I think it is a very valuable educational right and the Government has some responsibility to insure that its agents have not ruled out this freedom of choice.

The other comment I would like to make concerns the concept that a man or woman's earnings really belong to the State. I think this is very basic in what we are talking about.

What we are talking about is letting a working man or woman keep his or her earnings for the purpose of sending their children to the school of their choice, and I just could not more completely disagree with the very popular trend in America today that somehow all earnings belong to the Government.

For that reason, I cannot agree with the argument being made by your panel. If I might ask one question, Mr. Baker, I do not want to be personal, but you mentioned that you consider yourself middle class. Would you mind letting us know your income——

Mr. **Baker.** I cannot to the dollar. My wife works and I would say our combined income is around $40,000.

Senator **Roth.** That to me is a very significant point. Because I think most Americans, whether they make 20 or 10 or 30, or 40,000, pretty much look upon themselves as middle class. But I think, if I understand your testimony, Mr. Gunn, you at one point based your opposition to tuition tax credits because you said they benefit those in excess of $10,000 and that was helping the rich.

The fact of the matter is that inflation and higher taxes have made it very difficult for people even in your range to meet the cost of schools, buying homes and the other many things that we have always considered part of the American dream.

For that reason I will be perfectly candid. It outrages me when the Secretary of HEW claims these tax proposals will only be helping the rich, helping the lawyers, and the doctors, when the facts show that 90 percent of the benefits under my program would go to those making less than $25,000. They are not rich.

The fact of the matter, if you project a little down the road, with the present cost of living going up, and so forth, is you are going to be far from rich if you only make $25,000. There are studies being made that show $23,000 is considered a minimum income for a family of four in an urban area.

All I am interested in doing here is to try to see that the average working citizen has a freedom to keep some of his earnings to make his choice as to where he wants to send his children. And I regret that the trend in recent years, and what I hear espoused so much on the floor of the Senate, is this idea that all roads lead to Washington. All programs should be, as you say, Mr. Baker, appropriations. We create bureaucracies. The Federal Government decides who is in need.

Mr. Baker. I am not arguing, incidentally, for big government. Do not put me in that category. I am just talking in terms of taxes.

Senator Roth. But, unfortunately, what you are talking about results in big government. If you are going to say that we are going to do away with tax expenditures or whatever you want to term them and move to more Federal spending programs, it always result in more bureaucracy.

Mr. Baker. I did not say that either.

Senator Roth. But you did say that you did not believe in any kind of tax expenditure, but you believe it should be through the appropriations procedure.

Mr. Baker. If Congress decides that they want programs, then I think the affirmative approach is better, but I do not think——

Senator Roth. Would you have the Federal Government do away with their educational appropriations?

Mr. Baker. I think this is a determination Congress will have to make. There are some programs I would like to see done away with. I can think of a number of programs that I do not favor and I think you can too.

Senator Roth. I will have to agree with you on that.

Mr. Baker. I apparently did not make my case and I am speaking not for Dr. Wood, not for the Baptist Joint Committee, but for myself in that I do prefer a different kind of tax system. I would prefer, Mr. Moynihan, a fair, much sharper graduated income tax rate than we have with a much higher entrance level on——

Senator Moynihan. That is a perfectly fair position.

Mrs. Flast. May I respond for a moment, Senator Roth?

At the elementary and secondary level, I think there is a greater disparity with the cost of private education than there is at the higher education level.

Private schools in our community—I am talking about secular private schools—range in cost from $3,000 to about $5,000 a year annually. There are very few of what we would call middle-income—low-middle income—parents who, even with a $500 tax reimbursement, are going to be able to afford that kind of education.

The other schools that are available are nonpublic sectarian schools of one or another denomination. Generally the tuitions in those schools are lower, but then I think we have to answer the question, the basic question in all of this: Should all taxpayers be required, be compelled, to support religious education, whether it is their own religion or someone else's religion? Is this not what we are talking about, compelling a man to pay taxes to support another man's belief?

Senator ROTH. In my judgment, underlying what you are saying is that all earnings belong to the Government. What we are really saying here, in my view, and in the view of many, is that when we are talking about tax credits we are saying that we want to let people retain more of what they earned, they are not to become Government funds.

I think that is proper. The only other comment I care to make is that many people seem to feel that the more money you put in the public schools the better the education is. If I understand the figures Senator Moynihan referred to yesterday, in many cases schools that are giving the best quality education for children are the private schools at a far less cost.

Senator MOYNIHAN. The average range we had in testimony yesterday was from a low of about 19 percent of comparable public school cost to a high of 43.

Senator PACKWOOD. I want to——

Mrs. FLAST. That is with selective admissions policies.

Senator PACKWOOD. I wonder if I might, Mr. Doerr, ask you one question. This bill has at the moment 26 Republican and 24 Democrat cosponsors including on this committee Senators Moynihan, Ribicoff, Nelson, and Hathaway and of course, the late Senator Humphrey.

In the Christian Science Monitor of October 18, 1977, you were quoted as follows: "The bill has a definite partisan Republican strategy to win over blue-collar voters." Did you say that?

Mr. DOERR. Yes; I did. The sources of my comment are the National Catholic Reporter reports printed in that newspaper in the summer of 1977 and in October 1977, following the introduction of the bill.

If I may quote from the report by Mark Winiarski of the Washington bureau of the National Catholic Reporter:

> Although Catholics crowded behind the scenes, the Senate sponsors of a new bill to provide tax credits for private school tuition want to make sure the measure is not labeled Catholic.

In both of the reports together, the two reports indicated that one of the primary architects of the bill is the Reverend Donald Shea, head of the Republican National Committee's ethnic/Catholic division. I quote from Mr. Winiarski's article of October 10, 1977:

> This method of indirect aid to private schools interested the Republicans during the 1976 presidential campaign, Father Donald Shea, now director of the Republican National Committee's ethnic/Catholic division, told NCR.
>
> However, the idea was lost in the campaign shuffle. In March, Shea said, he discussed its possibilities with Republican officials who sent him to Packwood.

During the drafting period, Moynihan, who had drafted less extensive aid bills, joined the coalition. Right behind him were, among others, Father Virgil Blum of Marquette University, Father James Burtchaell, until recently provost at the University of Notre Dame and Charles Whelan, a Fordham Law School professor.

Beginning in June, Shea began meeting with representatives of the U.S. Catholic Conference, Missouri Synod Lutherans and Father Edward Spiers of the Citizens for Educational Freedom and head of educational research at Catholic University. The cash refund was written in, Shea said, at the insistence of the USCC and Lutheran officials.

This would seem to back up the statement I made to the Christian Science Monitor.

Senator Packwood. So long as you were quoting someone else's statement. It was not your statement. This bill is not any kind of Republican partisan plot. I doubt if you would get most of the Democratic sponsors on this to concede they have become part of a double trick.

Senator Moynihan. I do not know. I am beginning to think a little bit.

Senator Packwood. Swept into a partisan plot to throw the Democrats out of office, that is.

Mr. Doerr. We are talking politics and in the recent decade, we have had people in political life in both parties appealing for votes in various ways. Daniel Shorr got himself in trouble for accusing President Nixon of offering parochial schools words instead of dollars.

This has been a hot, stinky, political issue in State politics and local politics and national politics. It hurts. I certainly sympathize with any person seeking public office who has to contend with people dealing with this issue, or the abortion issue, or the Panama Canal, or anything else.

It is not comfortable for politicians and office seekers. The pressure groups seeking tax aid for parochial schools have been capable of making a great deal of effective noise. I referred earlier in my statement to the 10 referendum elections which have been held in the last decade.

I participated in every one of those 10, personally. In two referendums, in Maryland, I was campaign chairman for the State. I know how much money was spent on both sides of these campaigns. Our side was outspent by enormous quantities of money. According to Newsweek, in the 1967 referendum in New York State, Citizens for Educational Freedom and the forces seeking ratification of this constitutional amendment spent $2 million.

Mrs. Flast is probably more able than I to state how much money our side spent, but it was probably not over $50,000.

Mrs. Flast. That is right, about $20,000.

Mr. Doerr. Yet, we won three-quarters of the vote.

In Maryland, where all expenditures had to be reported, we were outspent by a factor of 8 to 1 in our 1974 referendum. It is tough to be a politician, but this is the thing that happens. When pressure groups, sectarian pressure groups, work to bring this issue into the partisan political process, we end up with stories in the National Catholic Reporter and Christian Science Monitor. This is part of the game.

Senator PACKWOOD. We will conclude. I apologize to the reporters just coming in. We are going to break for lunch until 2:30 p.m.

[The prepared statements of the preceding panel follow. Oral testimony continues on p. 322.]

STATEMENT OF CAROLYN BALLEISEN

I am Carolyn Balleisen, Chairwoman of the Workgroup on Education of the National Affairs Committee of the National Council of Jewish Women. I appreciate the opportunity to appear before you today to testify on an issue of concern to my organization.

The National Council of Jewish Women, an organization established in 1893, with a membership of over 100,000 throughout the United States, has been actively supporting public education since its inception. This support is continuing to this day. At our Biennial Convention in March 1977, the delegates adopted the followng resolutions:

The National Council of Jewish Women believes that American democracy depends on a strong system of public education to develop the highest potential of the individual. Therefore for almost 25 years we have resolved:

"To work for financial support for public education, * * * to ensure that public funds are used only for *public* education and to protect and uphold the constitutional principle of separation of church and state which is basic to our system of public education."

The bill before you today is flawed in many respects. In the first place, S. 2142 grants a tax credit for tuition for both private elementary and secondary schools and for tuition to colleges. The issues and considerations related to private school tuition and college tuition are so vastly different that at the very least the bill should be divided into two parts. Our testimony therefore will deal with both issues separately.

1. PRIVATE SCHOOL TUITION

a. The provisions of S. 2142 granting a tax credit for 50% of tuition up to $500 per student paid to a private secondary or elementary school are patently unconstitutional. The Supreme Court ruled in 1973 that a similar tax credit granted by the State of New York for tuition paid private parochial schools violated the First and Fourteenth Amendments. The Court reasoned that a tax credit for tuition paid to religious schools is but an indirect method of applying public revenue for private religious uses, prohibited by the First Amendment. The National Coalition for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973).

b. The proposed tax credit will in effect siphon off public revenues and further potentially weaken our public school system. Free public education is the heart of our American democracy. With public schools throughout the country in deep financial trouble, now is the time to strengthen public funding of education. It is not the time to siphon off public revenues to private schools.

c. The proposed credit has been estimated to cost upwards to $5 billion a year. With such pressing needs as welfare reform, health insurance, full employment legislation, public education, etc., crying for needed funding, now is certainly not the time to advance such costly, unconstitutional proposals.

2. COLLEGE TUITION

We recognize that many middle income families, indeed many of those of our own membership, are financially pressed by the huge costs of college tuition. We believe, however, that the tax credit approach is a blunderbuss method to alleviate these hardships. It makes no distinction between the wealthy and those in need. It has been estimated that 60% of its benefits will go to families with incomes over $25,000. It has no standards for educational institutions. It has no built-in safeguards to preclude colleges from merely raising tuition by the amount of the credit. We believe the proper way to approach the costs of college tuition is by the method Congress has already chosen, by grants-in-aid and guaranteed loans to deserving and needy students. Perhaps the income limitations of these programs may have to be raised. But the tax credit approach is too inequitable a way to meet this problem.

STATEMENT OF THE AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, ANDREW LEIGH GUNN, EXECUTIVE DIRECTOR, EDD DOERR, EDUCATIONAL RELATIONS DIRECTOR

Mr. Chairman and Members of the Committee, we are grateful to the Committee for allowing us this opportunity to comment on proposed legislation which raises very serious questions for the Congress and the American people.

Americans United for Separation of Church and State is a thirty year old public interest organization dedicated exclusively to promoting religious liberty and the constitutional principle of separation of church and state. Our members, who live in every state, span both political parties and virtually the whole religious spectrum. Our immediate past president was Dr. Jimmy R. Allen, currently president of the Southern Baptist Convention, the country's largest Protestant denomination. Our current president is the Rev. Calvin W. Didier, pastor of House of Hope Presbyterian Church in St. Paul, Minnesota. A few days ago, it may be recalled, Mr. Didier officiated at the funeral service for Senator Humphrey.

S. 2142 would provide massive federal aid to nonpublic elementary and secondary schools, to vocational schools, and to public and nonpublic institutions of higher education by means of tuition reimbursement income tax credits and grants (mislabeled "refunds").

Our analysis of this bill shows it to be unconstitutional in part and contrary to sound public policy in a variety of ways.

Before analyzing the bill, let us note that the estimates of its annual cost to the federal treasury and thus to American taxpayers, ranging from $4.7 billion to $6 billion, are probably low estimates. Including vocational schools in the plan will undoubtedly add considerably to the bill. In any event, these are only the start-up costs. The bill invites increases in tuition to take maximum advantage of the plan. In addition, passage of S. 2142 (assuming that it could survive a court test) would lead to intense and increasing pressure on Congress to increase the percentage and amount of tuition reimbursed to higher and higher levels. The eventual cost of the plan could easily reach several times the start-up cost.

In addition, passage of S. 2142 by Congress (again assuming survival of a court test) would unleash pressures upon state legislatures to enact similar legislation. In the long run, the tuition reimbursement plan could cost American taxpayers many, many billions of dollars per year.

In analyzing the defects of S. 2142, it is necessary to separate the three basic levels or kinds of educational institutions which would stand to benefit from the bill: elementary and secondary nonpublic schools, public and private colleges, and vocational schools.

OBJECTIONS TO S. 2142 AS APPLIED TO ELEMENTARY AND SECONDARY SCHOOLS

1. As applied to denominational elementary and secondary schools, which enroll over 90% of nonpublic school students, S. 2142 violates the First Amendment. State legislation quite similar in intent and effect has been ruled unconstitutional by the U.S. Supreme Court in recent years. (*Committee for Public Education and Religious Liberty* v. *Nyquist*, 413 U.S. 756 [1973]; *Sloan* v. *Lemon*, 413 U.S. 825 [1973]; *Essex* v. *Wolman*, 409 U.S. 808 [1973]; *Grit* v. *Wolman*, 413 U.S. 901 [1973]; *Franchise Tax Board* v. *United Americans*, 419 U.S. 890 [1974])

Since the First Amendment principle of church-state separation has been "regarded from the beginning as among the most cherished features of our constitutional system," as Justice Lewis F. Powell has stated, the First Amendment must prevail over even the "most appealing" arguments for benefits which would inescapably go to sectarian institutions.

2. The genesis and promotion of this bill represents a certain confluence of religious and political interests. As the Supreme Court pointed out in the 1971 *Lemon* parochiaid ruling, "In a community where such a large number of pupils are served by church-related schools, it can be assumed that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who

oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. * * *

"Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect." This bill could so entangle religion and politics that two centuries of progress in our country with regard to religious liberty and church-state separation could be obliterated.

3. Denominational elementary and secondary school faculties, student bodies, and curricula tend toward religious homogeneity. S. 2142, by aiding such schools, which include at least 90% of nonpublic school enrollment, would be federal government subsidization of sectarian division and divisiveness in education. The result of this could only be a decline in interfaith and community harmony.

4. While many nonpublic schools are well integrated racially, in general they tend to serve smaller percentages of minority students than do public schools. S. 2142 would in the long run harm the cause of racial integration and worsen public school racial imbalances.

5. According to the 1977 report of the National Center for Educational Statistics, 57% of elementary public school parents earn less than $7,500 per year (in 1967 dollars) while only 34% of nonpublic parents fall in that category. While 45% of nonpublic elementary parents earn over $10,000 per year (in 1967 dollars), only 25% of public school parents are in that category. On the secondary level, public school parents have a median income of $12,300, while nonpublic school parents had a median income of $15,962, which is 30% higher. S. 2142, thus, would exclusively benefit nonpublic school parents, who tend to be more affluent, and provide no benefits whatever for generally less affluent public school parents.

6. Since nonpublic schools are often selective academically, S. 2142 would enhance the competitive position of nonpublic schools in relation to public schools.

7. By subsidizing nonpublic schools which tend to be religiously homogeneous, and to serve proportionately fewer minority and less affluent children, S. 2142 would:

A. Encourage the religious, ethnic, and class balkanization of American society and increase the centrifugal forces in society which have proven so destructive in other countries, such as Northern Ireland.

B. Weaken the competitive position of the democratic, religiously neutral, more open public schools which serve 90% of our children. This would gradually convert public schools into shrunken "wastebaskets" for poor, minority, and handicapped students. The American dream of a great common school system would be shattered.

C. Reduce academic freedom and lessen the educational pluralism and diversity to which the individual child is exposed more in public than in nonpublic schools.

8. S. 2142 would tend to favor larger religious bodies, capable of assembling sufficient students to operate viable schools at reasonable cost, over smaller religious bodies which would have great difficulty competing with the larger groups.

9. Acceptance of and dependence upon tuition reimbursement federal aid would in the long run diminish the freedom and independence of private schools to pursue their religious or other special missions. Public schools may not hire or fire teachers for religious reasons, and may not impose religious observances or instruction upon students. Should parochial and private schools partially supported with public funds be allowed to do what public schools may not? Should we create a special class of schools which can have their cake and eat it too?

S. 2142 would also intrude government and public dollars into the internal denominational controversies not only over tax support but also over whether separate, parochial education should be continued.

10. Public schools are controlled by boards elected by or responsible to all the people, including those who patronize nonpublic schools. S. 2142 would compel the public at large to support private and parochial schools in whose operation they would have no voice. Our ancestors, we believe, fought a war for independence from "taxation without representation."

11. The American people in recent years have repeatedly expressed their views on the subject of government aid for parochial and private schools. They have consistently voted against such aid. Here are the results of the statewide referenda of the past decade on government aid for parochial and private schools:

State	Year	Vote against (percent)	Vote for (percent)
New York	1967	72.5	27.5
Michigan	1970	57.0	43.0
Nebraska	1970	57.0	43.0
Oregon	1972	61.0	39.0
Idaho	1972	57.0	43.0
Maryland	1972	55.0	45.0
Do	1974	56.5	43.5
Washington	1975	60.5	39.5
Missouri	1976	60.0	40.0
Alaska	1976	54.0	46.0

Public opinion clearly does not support the inclusion of parochial and private schools in public funding of education.

OBJECTIONS TO S. 2142 AS APPLIED TO HIGHER EDUCATION

1. As applied to pervasively sectarian colleges, S. 2142 is of questionable constitutionality. While the Supreme Court has applied the First Amendment more loosely to colleges than to lower schools, it has not approved tax aid to pervasively sectarian colleges. Should Americans pay higher taxes to help support colleges which would directly or indirectly exclude a great many of them from faculties or student bodies for religious reasons?

2. Since public college tuitions are not only lower than private college tuitions, but are generally also below the $1,000 level at which S. 2141 would deliver its maximum benefit of $500 per student, the bill clearly favors private over public colleges. Further, since, according to the 1977 report of the National Center for Educational Statistics, nonpublic colleges are able to spend 35% more per year per student than public colleges, S. 2142 would preserve the advantageous position of nonpublic colleges in relation to public institutions.

3. Public opinion, as measured in recent statewide referenda, opposes tax aid for denominational and other private colleges. In the three most recent such referenda, voters rejected proposed constitutional amendments which would have permitted state aid to nonpublic colleges, and did so despite massive campaigns to sell the amendments to voters. Here are the results of the referenda:

State	Year	Vote against (percent)	Vote for (percent)
Washington	1975	60.5	39.5
Nebraska	1976	53.0	47.0
Alaska	1976	54.0	46.0

OBJECTIONS TO S. 2142 AS APPLIED TO VOCATIONAL SCHOOLS

Although Americans United sees no First Amendment problem in tuition reimbursement aid to secular private vocational schools, we would like to commend to the Committee's attention the article in the January 15, 1978, *Washington Post* by Jean Carper entitled "Why Those Student Loans Should Not Be Repaid."

Carper makes the point that, "A massive study of the problem by the Brookings Institution in 1974 noted: 'Federal financial support * * * has played a major role in the growth of the private vocational school industry with only the most minimal safeguards * * * thus, government itself has underwritten the development of school abuses * * *' Numerous investigations by the Federal Trade Commission showed that students were subjected to misleading advertising, deceptive salesmanship and substandard schools; many consequently dropped out and many others who graduated could not get jobs because they were ill-trained or the jobs promised by the schools did not exist."

CONCLUSIONS

Inclusion of religious elementary and secondary schools an . pervasively sectarian colleges among the beneficiaries of S. 2142 is both unconstitutional and very unwise public policy. The built-in preference for private over public colleges is also unwise public policy. The bill should be modified to eliminate these infirmities.

We understand the problems of parents who choose to send their children to nonpublic schools. Many of our staff and members would personally benefit from S. 2142, but we believe that the principles defended in this statement far outweigh such personal advantages. We believe that our communities of faith, aided by the income tax deductibility of religious and educational donations, have the financial and spiritual strength to keep their private educational institutions healthy without government funds or entanglements. We believe that the freedom and independence of religious and other private institutions would be tragically compromised by the acceptance of the indirect aid proposed in S. 2142.

The problems of middle class families with children in college could be alleviated by more generous, more accessible, and more imaginative and flexible student loan programs.

We believe, in conclusion, that the enormous benefits and blessings enjoyed by our country as results of our wise policy of separation of church and state, our great systems of public schools and colleges, and our heritage of free, independent religious institutions should not be idly cast aside is deference to the demands of private special interests.

STATEMENT OF JAMES E. WOOD, JR., EXECUTIVE DIRECTOR, BAPTIST JOINT COMMITTEE ON PUBLIC AFFAIRS

I am James E. Wood, Executive Director of the Baptist Joint Committee on Public Affairs.

The Baptist Joint Committee on Public Affairs is composed of representatives from eight national cooperating Baptist conventions and conferences in the United States. They are: American Baptist Churches in the U.S.A.; Baptist General Conference; National Baptist Convention of America; National Baptist Convention, U.S.A., Inc.; North American Baptist Conference; Progressive National Baptist Convention, Inc.; Seventh Day Baptist General Conference; and Southern Baptist Convention. These groups have a current membership of nearly 27 million.

Through a concerted witness in public affairs, the Baptist Joint Committee seeks to give corporate and visible expression to the voluntariness of religious faith, the free exercise of religion, the interdependence of religious liberty with all human rights, and the relevance of Christian concerns to the life of the nation. Because of the democratic structure of individual Baptist churches and conventions, we do not purport to speak for all Baptists.

However, the Baptist Joint Committee, as well as its member Baptist denominations, has spoken strongly against the use of public funds to support either directly or indirectly religious institutions or schools which are operated for religious purposes or which teach religion as an integral part of their curriculum. We contend that the bill under consideration by this Subcommittee do aid indirectly such religious institutions and schools and, therefore, we are compelled to oppose the bills for legal reasons. Furthermore, we oppose tuition tax relief, even for tuition paid to public institutions, on public policy grounds.

THE LEGAL BASES OF OPPOSITION

The First Amendment to the Constitution of the United States forbids Congress from making any law "respecting an establishment of religion." The Supreme Court in *Lemon* v. *Kurtzman*, 403 U.S. 602 at 612 (1971), explained that "a law may be one 'respecting' the forbidden objective while falling short of its total realization. A law 'respecting' the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not *establish* a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment." Tuition tax relief bills applicable to tuition paid to schools or colleges which are pervasively religious are properly classified as "respecting an establishment of religion."

No one seriously questions the raison d'etre of parochial schools and religion-permeated colleges. They were established and continue to exist for religious reasons. In a recent case, *Catholic Bishop of Chicago* v. *National Labor Relations Board*, 559 F. 2d 1112 (7th Cir. 1977), the N.L.R.B. was denied jurisdiction over certain secondary diocesan schools operated by the Roman Catholic Church. The Church argued that because its schools are religious the First Amendment makes it unconstitutional for a Board created by an act of Congress to exercise jurisdiction over its schools. The Court of Appeals for the Seventh Circuit accepted the Church's argument that its schools are religious and held that separation of church and state required that the N.L.R.B. not have jurisdiction over religious schools.

In an article, "Why Catholic Schools?," Father Christopher O'Toole, C.S.C., stated:

> The purpose of the parochial school is to permeate with the Faith and the spirit of the Gospels the total educative process. In a parochial school the teaching of religion, for example, is not simply just another subject to be learned and which is not taught in the public schools. No, the entire curriculum is to move forward in an atmosphere of faith in order to produce a pupil who knows, at least in an elementary way, how to relate all knowledge to its ultimate source—God himself. National Catholic Register, August 6, 1972.

The courts have held:

> The basic purpose of denominational education is to foster and maintain the teachings of a denominational religion. The religious aspect of the curriculum must be the principal and dominant reason for the existence of such schools. *Essex* v. *Wolman*, 342 F. Supp. 399 (S.D. Ohio 1972) *aff'd.* 409 U.S. 808 (1972).

The Court made some distinctions between post-secondary and elementary/secondary eduction in *Tilton* v. *Richardson*, 403 U.S. 672 (1971), and permitted construction aid for secular programs at the college level which it would not permit at the elementary or secondary level. In *Roemer* v. *Board of Public Works of Maryland*, 96 S. Ct. 2337 (1976), the Court, in a 5-4 judgment, repeated the distinctions found in *Tilton* and allowed state tuition grants to be used only in colleges which are not permeated by religion. The Court did not open the door for public aid to *all* colleges and universities and it did repeat its interpretation of the First Amendment as an absolute ban on aid to a college's religious programs. For example, *Roemer* (at 2345) declared that government may not "pay for what is actually a religious education, even though it purports to be paying for a secular one, and even though it makes its aid available to secular and religious institutions alike." The bills under consideration today would require federal administrators to determine the degree of religious permeation in a college or one of its programs in order to determine whether tuition paid to that college would qualify for a tax credit. The constitutional problem which such determinations would raise will be discussed below.

The Supreme Court has established a three-pronged test to determine whether legislative acts are consistent with the establishment clause: (1) there must be a secular legislative purpose, (2) the effect of the legislation must be to neither promote nor inhibit religion, and, (3) the legislation must not excessively entangle the state in religion and must not be politically divisive along religious lines.

Even if we concede, for the sake of argument, that these tuition tax relief bills have a secular purpose—the granting of tax relief to those taxpayers who pay tuition to send themselves and their dependents to schools or colleges—these bills fall short of the constitutional mark on the other two tests.

Congress may not constitutionally do by indirection that which the Constitution forbids it to do directly. Tax credits to taxpayers enrolled in or with children enrolled in schools which are permeated with religion have the effect of aiding religion in that they make the taxpayer a mere conduit for public aid to religious schools—aid which cannot be given directly or indirectly. To provide for such tax credits would constitute an act respecting an establishment of religion. *Committee for Public Education and Religious Liberty* v. *Nyquist*, 413 U.S. 756 (1973).

Tax credits to those taxpayers who pay tuition to religious schools would lead to an excessive administrative entanglement of government and religion. Administrators in the Treasury Department and the Internal Revenue Service would be compelled to make continuing determinings of the degree of religious permeation in the curriculum of a school or college in order, under *Roemer*, to determine whether tuition paid to a specific institution qualifies for a tax credit.

A broader base of entanglement of yet a different character is presented by the divisive political potential of tax credits.

Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. * * * It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith.

* * * political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. *Lemon* v. *Kurtzman*, 403 U.S., at 622.

That such proscribed political divisions along religious lines are present with reference to S. 2142 was evidenced by the statements made by parties on both sides of the issue when the bill was introduced and are apparent in the hearings of which this statement is a part.

From a purely legal standpoint we earnestly urge this Subcommittee, in any tuition tax relief bill reported, to exclude from the category of "Eligible Educational Institutions" those schools and institutions which are permeated with religion. Failure to do so would inevitably lead to judicial and political confrontation.

THE PUBLIC POLICY BASES OF OPPOSITION

Those people who are in the middle income brackets, as I am, are acutely conscious of the tax burdens we bear. Those people, and again I am included, who have children in schools which charge increasingly large tuitions are painfully aware of the costs we assumed when we made the choice to send our children to a particular school. Tax relief which is equitable and which is the product of an integrated policy determination would be welcomed by middle income Baptists. However, Baptists' traditional position in support of public education and our examination of the various bills under consideration today require the Baptist Joint Committee on Public Affairs to oppose all of them for the public policy reasons which follow:

1. Tax relief provided for in these bills does harm and achieves only marginal tax relief. The relief provided for the middle income taxpayer is largely psychological. For the tax relief to be more than just psychological the maximum tax credit would have to be increased several times over. The passage of a bill such as S. 2142 would open the door for divisive struggles to increase tax credits to a meaningful level. Even the income losses suffered by the government under the bills being considered pose some threat to existing educational programs. The harm caused by eliminating or curtailing some of these programs will be discussed below.

2. Tax expenditures *are* real money expenditures even though they do not appear as a line item in a budget. Every dollar which government elects not to collect *in order to support indirectly a specific program* is, in essence, money spent on that program. The use of tax expenditures for the purpose of supporting a specific program is per se undesirable policy.

3. The Committee on Budget has indicated that it might well consider tax expenditures on education as a part of the total education budget. If this is the case, the dollar cost of tax credits will have to be set off by a parallel reduction in other educational programs. If tax credits, which are not need-based, are to be substituted for need-based educational grants, the burden will be borne by those least able to pay. The categorical grants programs of H.E.W. perhaps could be better administered, but tax credits should not be an alternative to them.

4. The bills under consideration today would give private elementary and secondary schools—the overwhelming majority of which are religious—a substantial advantage over public schools in recruiting and retaining students. Public elementary and secondary schools do not charge tuition and, therefore, there would be a disincentive for parents to leave children enrolled there when a tax advantage is available if their children are sent to private schools. Children of elementary and secondary school age are compelled by law to attend either public or private schools. The presence of tax credits would encourage students to enroll in and/or remain in private schools. The tendency would be for the less gifted and the poor to remain in the public schools. Much of the "melting pot" element of public education unfortunately would be lost. Public policy which favors private schools over public is inconceivable.

5. The tax relief these bills provide would soon be totally eroded by tuition increases at all educational levels. Schools and colleges would see the tax credits as the aid which they were really intended to be and would tend to raise tuitions to include the tax credit. Thus the taxpayer would serve simply as a conduit for aid to schools and colleges. If money must pass through nonessential hands to reach an intended final recipient, a less efficient system is created. It would be far more efficient to make direct grants to those institutions which may constitutionally receive public funds.

6. Finally, we consider tax credits inequitable and regressive. Those taxpayers at the lower income levels will receive benefits at a rate far lower than their needs while taxpayers with middle and upper level incomes, without pressing need for financial aid, will probably receive the maximum tax credit. When this regressive aspect is considered in conjunction with the probability of curtailment of need-based federal educational programs, the inequities become even more apparent. Those who most need education to escape poverty receive the least help.

CONCLUSION

From the point of view of religious liberty and separation of church and state we oppose any tax credits which would directly or indirectly aid parochial schools and those colleges which are essentially a part of the religious mission of a church. On the basis of public policy considerations we must oppose all forms of tuition tax credits. Thus we urge that this Subcommittee refuse to recommend any tuition tax credit bill to the full Finance Committee.

STATEMENT OF FLORENCE FLAST, CHAIRMAN, COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY (PEARL)

My name is Florence Flast, I am Chairman of the Committee for Public Education and Religious Liberty (PEARL) which represents 36 major civic, religious, educational, civil rights, and labor organizations in New York State. A list of these organizations is attached to my statement.

Our members, of every religious, ethnic, racial, and economic group, including the vast majority of parents of school children, believe strongly in the free public school system as a unique and fundamental institution of our democracy, one in which children of all backgrounds and religious persuasions have the opportunity to learn together and develop respect for each other's values and contributions to the common good—a system open to all children without discrimination, in which equal protection under the law can be enforced.

We are also deeply committed to the preservation of religious liberty guaranteed by our Federal and State constitutions. What Thomas Jefferson said two centuries ago is still true: To compel a man to furnish through taxation contributions for the propagation of religions in which he disbelieves is sinful and tyrannical. It is a singularly American principle which has stood the test of over 200 years. It was articulated again by President John F. Kennedy, when he said, "I believe in an America where the separation of church and state is absolute—where no church or church school is granted any public funds or political preference." It has been incorporated in the constitutions and statutes of all states, has been protected by the courts and reaffirmed by the electorate in more than a dozen state referenda.

The proposed Tuition Tax Credit Act of 1977 (S. 2142, H.R. 9332) does violence to this principle. The intent and effect of tax credits for tuition at the elementary and secondary school levels are obvious. Advocates of governmental aid to parochial schools have been lobbying for such legislation for a number of years and the Catholic press has reported that the bill's main sponsor, Senator Packwood, "worked closely in drafting the bill with Father Donald Shea, director of the Ethnic-Catholic Division of the Republican National Committee." (The Tablet, September 29, 1977)

This is a circuitous means of forcing all taxpayers to contribute toward the refunding of tuition payments to parents of children attending nonpublic schools, 95 percent of which are religiously affiliated and controlled. A tax credit is a thinly disguised tuition grant. Moreover, a tax credit for tuition in parochial schools represents a preferential form of governmental assistance to some religious institutions and not to others, in that it would aid only those denominations which maintain full day schools. The parent who pays for religious instruction during after-school hours or Sunday is not being offered this tax credit, nor is it being offered to the taxpayer who makes voluntary contributions to his church or synagogue.

Religious liberty in America means not only the right to pursue one's own beliefs and the right to choose a religious education for one's children, but freedom from compulsory taxation to foster the religious beliefs of others.

Yet passage of Senate 2142 would result in higher taxes imposed on all citizens to meet the deficits brought about by the special tax credits going to a privileged minority to support their religious education.

We do not deny any parent his right to choose private or religious education for his children, but no parent has the right to demand a share of public tax funds to subsidize a private choice just because he is not using available public services. He has no more right to ask us to support the religious teachings of his children than to meet the deficits of his church which may result from diminished contributions.

The argument is made that those who send their children to private elementary and secondary schools bear a double burden—paying tuition for services they receive and paying taxes to support public education. But all citizens, whether parents or not, pay taxes to support public education and all other governmentally provided services whether they personally benefit from such services or not. That is the function of taxes.

The courts have consistently barred direct public grants to parochial schools, finding their primary purpose to be "vehicles for promoting religious faith." Indirect aid through tuition grants or reimbursements to parents of nonpublic school children have likewise been invalidated, the judiciary maintaining that "what may not be done directly may not be done indirectly."

Leo Pfeffer, counsel to PEARL, has presented to this committee on our behalf the constitutional arguments against tax credits for tuition in sectarian schools and has cited more than a dozen Supreme Court decisions in cases originating from legislative attempts to provide public funds to aid such schools.

Denial of such aid has nothing to do with parental rights, educational diversity, or pluralism in our contemporary society. The argument for diversity of choice in education is mythical: 90 percent of the elementary and secondary school children in this country, including almost two-thirds of all Catholic children, attend public schools. Of the remainder, 90 percent attend Catholic schools, 5 percent other sectarian schools, and 5 percent nonsectarian. The selective admissions and retention policies of nonpublic schools, by religion, academic achievement, national origin, behavior, and socioeconomic status make them more elitist than pluralistic. Racial segregation is the all-too-frequent by-product, with private schools having a majority of white students and urban public schools a majority of nonwhites.

This pattern of segregation in the older cities has been amply documented by the United States Commission on Human Rights. The New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education which had been appointed by Governor Nelson Rockefeller and the Board of Regents to conduct a comprehensive study of education in the state—both public and private—issued a report in 1972. It too found that racial segregation in sectarian schools exceeded that in public schools. The commission, commonly referred to as the Fleischmann Commission, felt that it could not advocate increased aid to nonpublic schools where the degree of segregation is so acute, while at the same time have the public school system devote its attention and resources to relieving the inequities caused by racial imbalance.

This pattern of segregation is discernible in every one of the cities to which Senator Packwood refers in his September 26th statement. He suggests, however, that in these cities substantial financial relief for local taxpayers is realized because the private school attendance reduces the financial burden of the public schools. The fact is that not only has the private and parochial school attendance in these cities exacerbated segregation in public schools, but the public schools are increasingly starved of operating funds. The public schools in Cleveland, as well as in other cities in Ohio, are in desperate financial straits. School budgets are voted down, schools have had to close for weeks or months at a time, teachers have gone unpaid. None of this suggests benefits reaped from private school enrollment, except for the children in the private schools. Yet the Ohio State government has been one of the most determined to provide public funding for nonpublic schools. The same has been true of Pennsylvania, New York and other state which have repeatedly passed parochial legislation. No one came to the aid of New York City's public schools when the fiscal crisis caused them to reduce the school week and deprive children of ninety minutes of instruction every week for a whole year. Taxpayers have the power to vote down public school budgets, but they do not have the power to vote down state appropriations for private and parochial schools.

In regard to the effectiveness of a competitive "free market" concept between public and nonpublic schools, New York's Fleischmann Commission found no evidence of this either. They found only two distinctions, "sectarianism and a stronger code of discipline in some sectarian schools," neither of which justifies the expenditure of public funds.

In its recommendations, this prestigious commission called for a halt to further State funding of nonpublic schools, both sectarian and nonsectarian. It cited the divisiveness and disorder in some countries resulting from competition between public and religious schools for public funds, and concluded that public policy dictates that there be no change made in the historic doctrine of separation of church and state in this country. In their view, the fiscal restraints under which the public school system operates also dictates against public support of nonsectarian, nonpublic schools even though there are no consitutional bars to such aid.

The Fleischmann Commission noted that enrollment was projected downward in both public and nonpublic schools for the next decade. They found no evidence, however, that increased tuitions had affected enrollment and stated that "No public policy will halt the decline." However, private education is far from collapsing.

It is a fallacy to suggest, as Senator Moynihan has, that "While everyone pays taxes in support of schools, virtually none of that tax money makes its way into nonpublic schools." (Congressional Record—Senate, September 26, 1977) Tax-raised funds for health and welfare services do, and no one contests that; and Federal funds for educational purposes, presently being tested in the courts, also do. In New York City alone the nonpublic schools benefit from about $60 million annually in the Board of Education budget. This includes their receipt of subsidized transportation services, school lunch, health services, free textbooks ($15 per child), attendance services, speech therapy; and Federally funded remedial education programs, library materials, mini-grants, bilingual education programs, guidance counseling services, ESAA programs, and all the attendant administrative services.

Another myth is that the public schools represent an educational monopoly in services. Public schools are not monolithic institutions, but pluralistic in every sense, independently controlled by 16,000 local lay boards of education, democratically selected. Their governance, expenditures, students, size, faculties, curricula, quality, and innovativeness are as varied as the communities they serve.

Public schools share in common only one mandate, from which private schools are exempt: that is, they must operate within constitutional guidelines of nondiscrimination in admissions and hiring practices, academic freedom, due process, equality of opportunity, public accountability, and the prohibition from engaging in religious or political indoctrination. Therefore, as Senator Packwood stated, "Private institutions without the strictures of public governmental pressures sometimes speak to more select needs and interests than public institutions." But the governmental strictures imposed by those who are elected and responsible to the public must be imposed when governmental funds flow to private institutions, as many private institutions of higher education have learned; and tax credits for tuition would provide a pipeline for that flow as inevitably as direct grants.

Tax credits will surely encourage the raising of tuitions; the benefit to the middle-income family would be short-lived; and the pressures on Congress to increase the tax credit annually will be tremendous, for the nonpublic school lobbyists are seeking full, not partial support.

Tax credits for tuition would be a powerful incentive for a proliferation of private and religious schools. It would encourage racial, class, religious, ethnic, and economic segregation and greatly increase the tax burden on our citizenry. It would insure the demise of the public school because the Federal government would be paying parents an incentive not to use them. Despite their belief in the principle of public education, how many parents would not opt for a private school if it placed little strain on their pocketbook? How many people would not take a taxi or a private limousine rather than a subway or bus if they were offered a government subsidy for the luxury? To encourage this in education will lead to a further splintering of our society. In time the public school would be

the educational home only for the poor and disadvantaged. Public schools will receive no benefit from this legislation, nor will public school parents.

At the college and university level no one would dispute that costs have risen dramatically However, while Senator Packwood quotes the College Entrance Examination Board reports that between 1970–71 and 1976–77, the average tuition and fees rose 54 percent at private four-year institutions and 57 percent at public four-year institutions, Sentor Kennedy has pointed out that since 1972 student aid programs in the Office of Education have increased 340 percent (an increase from $1.0 billion to $3.4 billion), with direct grant programs being targeted more toward middle-income families.

In New York the Regional Plan Association in its publication "The State of the Region—1977" reports that college enrollment in the Region has increased 23.7 percent since 1970. I would have been greater if the budget crisis had not forced the City University of New York to end its long tradition of free tuition which resulted in a decline there of 19.5 percent in enrollment. But colleges in New York State, outside the City, increased enrollment by 52 percent from 1970–1976, "the increase shared equally in public and private institutions," according to this report.

These figures do not support the contention that institutions of higher education are under considerable strain. They do suggest however that the poor were squeezed out of our City University when the budget crisis forced a reduction in enrollment. These are not the students who would benefit from a tax credit.

Other options are available to the Federal government to finance higher education and to protect against the serious faults of this legislation.

We urge you to reject this measure, and not permit the tax credit for tuition to chip away at our religious liberty and our public education system.

Members of the Committee for Public Education and Religious Liberty:

American Ethical Union
Americans for Democratic Action
Americans for Public Schools
American Jewish Committee, New York Chapter
American Jewish Congress
A. Philip Randolph Institute
Association of Reform Rabbis of New York City and Vicinity
B'nai B'rith
Bronx Park Community
Citizens Union of the City of New York
City Club of New York
Community Church of New York
Community Service Society, Department of Public Affairs
Council of Churches of the City of New York
Episcopal Diocese of L.I., Department of Christian Social Relations
Humanist Society of Greater New York
Jewish Reconstructionist Foundation
Jewish War Veterans, New York Department
League for Industrial Democracy, New York City Chapter
National Council of Jewish Women
National Women's Conference of The American Ethical Union
New York Civil Liberties Union
New York Federation of Reform Synagogues
New York Jewish Labor Committee
New York Society for Ethical Culture
New York State Americans United for Separation of Church and State
New York State Council of Churches
State Congress of Parents and Teachers, New York City District
Union of American Hebrew Congregations, New York State Council
Unitarian-Universalist Ministers Association of Metropolitan New York
United Community Centers
United Federation of Teachers
United Parents Associations
United Synagogue of America, New York Metropolitan Region
Women's City Club of New York
Workmen's Circle, New York Division

[Whereupon, the hearing was adjourned at 1:35 p.m. to reconvene at 2:30 p.m.]

AFTERNOON SESSION

Senator **Packwood**. The committee will come back to order.

The first witness this afternoon is Mr. Steinhilber, substituting for Mr. Davis on behalf of the National School Board Association.

STATEMENT OF AUGUST W. STEINHILBER, ON BEHALF OF THE NATIONAL SCHOOL BOARDS ASSOCIATION

Mr. **Steinhilber**. Mr. Chairman, members of the committee, I will submit the statement for the record. You have heard many, many witnesses, and many of the items which I have in my prepared remarks have been said before. Therefore, I will just, if it is permissible with the committee, make a few extemporaneous remarks.

Senator **Packwood**. Mr. Davis' whole statement will be in the record.

Mr. **Steinhilber**. Yes. Thank you very much.

Mr. Davis is chairman of the school board in Austin, Tex., and experienced a few problems relating to weather last night, and therefore called and indicated he would not be able to make this hearing and asked me to make the presentation in his stead.

Just for the sake of continuity with some of the previous speakers, I would like to start off, if I may, with a quote. It is that:

> Education is the keystone in the arch of freedom and progress. Nothing has contributed more to the enlargement of this Nation's strength and opportunity than our traditional system of free universal elementary and secondary education.

That was given at the start of the 88th Congress by then President John Fitzgerald Kennedy. I think that basically gives you the background from which the National School Boards Association is presenting its particular position here today.

I would like to make a couple of comments as I said, extemporaneously. Item No. 1 is, the National School Boards Association has no position with respect to tax credits at the higher education level. We will realize, since the *Flask* v. *Cohen* case, that that particular issue is quite different constitutionally and quite different as far as our own membership is concerned. Therefore, we have no position on tax credits at the higher education level, and for that reason, we would also suggest that just a matter of courtesy, if a severability clause has not been added to this particular piece of legislation, as you go along, look at the question of severability, because we obviously will be advocates in challenging the constitutionality of that law were it to include it at the elementary and secondary level.

I would also like to say that I am somewhat reminded this morning of a position I was in in 1965, in that I was representing the Federal Government at that particular time. I would like to go back to the compromise of 1965, if I may, sir.

If you recall, aid to public schools, up until 1965, was caught on twin dilemmas. Dilemma No. 1 was the Powell amendment, which had been added each and every time a bill was going through, and was, of course, the forerunner of what became the Civil Rights Act of 1964. That item was issue No. 1.

The second issue was always the church-state issue. Aid to education always fell on those particular rocks, with certain exceptions, like the NDEA, which was able to justify——

Senator MOYNIHAN. You mean, exception?

Mr. STEINHILBER. Yes. However, two things happened in 1965 which were alluded to this morning. One was the passage of the Civil Rights Act of 1964. That resolved part of the aid to education question. The second was an agreement basically between those who represented public education and those who represented nonpublic education, and part of the agreement was under the Elementary and Secondary Education Act that aid would go to the public schools, meaning the actual dollars would go to the public schools.

But, while the aid would go to public schools, it would not be general aid to education. It would be categorical aid. So, it would be limited in scope, and to this day there is no general aid to education at the elementary and secondary levels.

The second part of the compromise was language which places the responsibility for the education of all children in the hands of the public schools. Done in this way, it says:

> To the extent consistent with the number of educationally disadvantaged children within your school district, you, the public school, have to provide such services, comparable services, if you will, to all children including those particular children in private schools.

and representing the National School Boards Association right now, I will say that the NSBA lives with that compromise and will continue to live with that compromise and still supports it.

One of the concerns we had with a particular piece of legislation which you have before you now is whether or not this push for tax credits indicates a change in posture with respect to the different sides on the church-state issue, and that the compromise of 1965 is no longer viable on either side, and whether or not we are now talking about going back to the pre-1964, where we will be looking for amendments on the elementary and secondary education side or on the other side. In other words, if there are tax credits, does this mean that we should now be seeking to turn the regular Elementary and Secondary School Act into aid to public schools and public schools alone with no responsibility to children in nonpublic schools?

I think that is a question we all have in our minds at this particular moment in time.

Senator PACKWOOD. Let me ask you a question. On page 3 of Mr. Davis' statement, he said:

> More importantly, the bill could also seriously erode local taxpayers' support for local property taxes which on the average account for 48 percent of total revenues and are highly sensitive to voter reaction.

I keep hearing this argument over and over from the public school sector. We depend on property tax. This is unfair. Why could you not use—you would have to change some state constitutions—but why could you not use tuition in lieu of property taxes? I am not talking about an increase, but as a property tax relief measure.

Mr. STEINHILBER. I think you and I as lawyers could say that this is possible, but politically it is impossible.

Senator PACKWOOD. Wait a minute. Why is it politically impossible?

Mr. **Steinhilber.** I think what you have is, most State constitutions—well, you have two legal problems. Problem No. 1 is the State constitution, which requires a system of free public education, and problem No. 2, and this is particularly a problem in the Western States, where as part of the provisions by which a number of States became States, was a requirement made by the U.S. Congress that as a precondition of becoming a State, the territory had to set up a system of free public education.

It could be similarly argued that the promise is no longer binding once the State has entered the Union, but I think it would raise a lot of political questions in the interim.

Senator **Packwood.** Let me ask you on the political questions, Oregon is a State with no sales taxes, so we are heavily dependent on income tax at the State level and property taxes at the local level, and about two-thirds of the property tax goes for education. A fair portion, not as much as it should be, but a fair portion of the school support comes from the State, mainly from the income tax. When you say politically, if you were going to put on the ballot in Oregon this measure, any school district may continue to levy property taxes for the support of the school districts if they want. They, in the alternative, may give the voter a choice as to whether they would rather pay for their school support by property taxes or tuition or both, and as long as the voter was given a choice and knew that this was not some disguised way to raise their total educational costs, that measure would pass overwhelmingly.

Mr. **Steinhilber.** You may be right, but I would say they are saying that you now change the system of free public education in the United States. One of the hallmarks of public education was that it was not, as has been described in the past—our Government is not a cafeteria-style government whereby you only pay for what you receive.

Therefore, the schools are in existence not merely—you could almost strike the word "merely," but it is not for children as such. It is also children plus societal concerns. It is the concern of not just those who will be paying tuition, but it would be similarly the concern of the industry paying property tax in order to make sure that they have individuals who are good workers within their societies.

It is a problem of the political realm to make sure that the society itself has a well-educated populace, and I think we would be changing the system dramatically, and I think those are the kinds of political forays we would find ourselves in, not just that simple issue.

Senator **Packwood.** I guess I do not follow you. In Oregon a fair portion of primary and secondary educational costs are now in essence borne by the income tax, because the State collects it and remits it to the school district, and you are saying that because of the difference of remission, if instead of going through the State and coming back you were to simply allow it never to go to the State, give the alternative to the local school boards, that that would change it.

Mr. **Steinhilber.** You are also saying that it is the power of the property tax and the State income tax, but not everyone who is paying State income tax has children within the school system, and that is the problem which I am trying to relay, that the interest in public education far transcends the parent who is sending the child to a particular school.

So, when you start talking about tuition, you have changed the philosophical bend upon which public education or education is based, and that is, it is a service limited or predominantly aimed at a specific group, not looking at the concerns of society as a whole.

Senator PACKWOOD. No; you are missing my point. Say a voter pays $1,500 in property taxes in the year. He does not itemize it for whatever reason. He owns his house outright and doesn't choose to itemize it. One thousand dollars of that roughly goes to the support of the schools. If you were to say to the voter now, in the alternative we will allow you to continue to pay $1,000 in property tax, or if you want you may pay $500 in property tax and $500 in tuition, it doesn't cost the voter anything, but if the voter could deduct half of that cost for tuition as a tax credit from his income tax, he would probably prefer that option. But I cannot seem to get local school boards to fathom this concept.

They have come to this Congress year after year after year asking for school support in one form or another, and this basically becomes for them a great educational revenue-sharing bill.

Mr. STEINHILBER. I would have to look at the details. I see what you are trying to get at, but I would have to take a look at that particular proposal in any number of ways. In effect, you are trying to make a tax credit or a tax writeoff situation at the local level.

Senator PACKWOOD. What I am saying is that the cost of educating children in public or private schools is high, and people who have children even in public schools have substantially more expenses than people who have no children at all, and this bill is very clearly drafted, drawn, and intended to give support to the middle income taxpayers especially who have children in public or private schools.

I have tried to emphasize over and over that the bulk of the benefits of this bill are going to go to those parents or people in public schools, not private schools, and this is a way that those who have children in public primary or secondary schools could take advantage of it.

Mr. STEINHILBER. We don't view it that way at the elementary and secondary level. We would make the division somewhat differently. We would say at the elementary and secondary level the bulk of the aid, and go back to a constitutional concept that the primary effect at the elementary and secondary level is the aid to nonpublic schools.

Senator PACKWOOD. It may be that if the public schools choose not to tak advantage of it—I can't force the schools to do it, but the bill does not prohibit it.

Mr. STEINHILBER. As I said, I really think that if you are talking in terms of tuition at the public school level, I think we would have to say some dramatic change——

Senator PACKWOOD. Tuition and fees at least to the extent of locker fees, gym fees, lab fees, book fees, and all the other fees that primary and secondary public schools now charge, the voter could take part of that off of their income tax.

Mr. STEINHILBER. What about property tax, and what about whose property tax? Here are some of the problems that I can see with your proposal.

Senator **Packwood**. Let's just forget the property tax for the moment, because that presents problems. You do have book fees, lab fees, and all these others you pay directly, right?

Mr. **Steinhilber**. But the problem you have is, not all States have income taxes.

Senator **Packwood**. You don't take them off the State income tax anyway. You take them off of your Federal income tax. I am not suggesting changing anything from any way that any public school finances themselves, except most of them, to my knowledge, have a variety of student fees which have been held not to violate the free public education clause.

Mr. **Steinhilber**. Only in certain States. There are a number of States that book fees and lab fees and things of that sort are in violation of the State constitution.

Senator **Packwood**. All right, go ahead.

Mr. **Steinhilber**. But I would like to also point out, one of the other questions which came up this morning relates to the whole question of the constitutionality of aiding school districts and or private schools on the question of the desegregation question.

In effect, the discussion has centered upon the concept of freedom of choice. I would like to point out to the committee that the freedom of choice problems which developed immediately after 1964 at the public school level were, after a period of time, declared unconstitutional, and indeed public schools now, and NSBA is not objecting, have an affirmative action to do certain things. An affirmative action process is developed at the public schools, hiring practices, school practices with respect to enrollments, with respect to who can get in, and things of that sort.

When one talks about tax credits, however, and tax credits at the elementary and secondary education level, we hear the term, well, it is freedom of choice. It may very well be freedom of choice, but it is not freedom of choice in terms of an affirmative action on nonpublic schools to do something about the problem of racial isolation in the United States, and I would contend that affirmative action were to be made part and parcel of the particular tax credit proposal, we would of course begin to see other kinds of problems as a result of this addition—but the addition is important.

I would also contend that public schools have an additional problem relating to things such as section 504 of the Vocational Rehabilitation Act, which relates to the responsibility, indeed, the obligation which the Federal Government has placed upon school districts to educate handicapped children, which they cannot in any size, shape, or form relinquish, and indeed, NSBA, in its testimony before the House Committee on Education and Labor and the Senate Committee on Human Resources, supported that particular concept, but those requirements really do not apply at a private school level.

How does that Federal requirement on public schools mesh with a proposal to aid a particular group of nonpublic schools?

So, these, sir, are some of the problems we see with the tax credit concept, and you will note there were a number of others in our prepared remarks. With that, I would say, sir, I will be open for any additional questions you might have.

Senator PACKWOOD. I don't have any further questions. If you will wait just a moment, Senator Moynihan may.

Mr. STEINHILBER. Delighted.

Senator MOYNIHAN. Excuse me, Mr. Chairman. Senator Javits called me.

Senator PACKWOOD. It is perfectly all right.

Senator MOYNIHAN. I don't have any questions. We were put on fair warning, and properly so—I would want to say that—just repeat very quietly what I said this morning. It is not the public doctrine, as I understand it, and perhaps in this respect we may read the Elementary and Secondary Education Act differently, that there is a presumption that education in the United States should be a Government function.

There has been on the part of many persons a desire, a feeling that this would be best, that it ought to be this way, and there has been the judgment on the part of other persons that it should be a mixed process, and these are different views, and politics is filled with different views, and as long as we do not attribute to them—which you have not done in your very thoughtful testimony—some constitutional mandate. It is one thing to wrap yourself in the flag. That we all understand. But the Constitution? No. The Constitution should be used much more discriminatingly, and not every issue that comes along, even as fundamental a one as this, is basically a constitutional question.

It is a question of what we think is good public policy.

Mr. STEINHILBER. Your Honor—Your Honor, that goes back to my court days.

[General laughter.]

Mr. STEINHILBER. I understand that exceptionally well, and if I may add a little bit of levity to the situation, literally last night my daughter, who is going to a Roman Catholic high school, had a note from the Mother Superior urging all parents to support your particular bill, and when I described to her how I was the following day going to be in opposition, we had a discussion at the dinner table.

[General laughter.]

Senator MOYNIHAN. I see who won that discussion, and may I say that is as it should be?

[General laughter].

Senator MOYNIHAN. Thank you very much.

Senator PACKWOOD. Thank you.

[The prepared statement of Mr. Davis follows:]

STATEMENT OF WILL D. DAVIS, PRESIDENT, NATIONAL SCHOOL BOARDS ASSOCIATION

SUMMARY OF REMARKS

The National School Boards Association opposes S. 2142 for several reasons. First, the bill threatens to erode the nation's public school system. The bill would encourage a drain not only of students from the public schools, but taxpayer and congressional support as well. The bill could have the effect of resegregating the schools by race and economic class.

The bill would result in unequal treatment in federal aid both by establishing a different format for aid and a wide disparity of accountability.

Further, the bill does not meet the principles set forth regarding the separation of church and state in the First Amendment and in recent Supreme Court interpretation.

Finally, the bill is based on misguided premises: that the private schools provide tax savings, that the beneficiaries of the plan would be lower middle class people, and that the bill would establish a "pluralistic" system characterized by freedom of choice from a public school monolith.

The NSBA supports the growth of quality in education. This bill would have the effect of *lowering*, not raising, the quality of education by eroding the public school system on which this nation has progressed.

INTRODUCTION

My name is Will D. Davis, and I am President of the National School Boards Association. I am pleased to have this opportunity to testify before this Subcommittee on Taxation and Debt Management Generally. The National School Boards Association is the only major education organization representing school board members—who are in some areas called school committee members or school trustees. Throughout the nation, approximiately 80,000 of these individuals are Association members. These people, in turn, are responsible for the education of more than ninety-five percent of the nation's public school children.

Currently marking its thirty-ninth year of service, NSBA is a federation of state school boards associations, with direct local school board affiliates, constituted to strength local lay control of education and to work for the improvement of education. Most of these school board members are elected public officials. Accordingly, they are politically accountable to their constituents for both education policy and fiscal management. As lay unsalaried individuals, school board members are in a rather unique position of being able to judge legislative programs purely from the standpoint of public education, without consideration to their personal professional interest.

Association policy is determined at the NSBA annual convention at which representatives from across the nation translate policies and resolutions into ongoing programs—including legislative recommendations.

Mr. Chairman, our testimony today speaks in total opposition to the application of federal tax credits to elementary and secondary education.[1] Apart from the philosophical objection expressed in our Association's policies, NSBA finds that serious questions are raised concerning (1) the impact of S. 2142 on public school systems, (2) federal favoritism toward private education, (3) the constitutionality of the tax credit concept, and (4) the educational premises upon which the legislation is based.

I. Public education in American society

Mr. Chairman, before addressing these major points, I would like to stress that our focus is on the future of public education. Therefore, a few comments should be made on the importance of public education in American society.

Public education has been the foundation of our country's progress. More than developing a national wealth of leaders, inventors, and scholars, the public schools have educated the people in the values, knowledge, and obligations required of a democracy. As our nation met the challenges of industrial development, the space age, and social equility, the public schools performed a crucial role. Accordingly, positive efforts should be made which can improve public schools for the future. Likewise, any proposal which can endanger our public schools must be viewed with extreme caution.

II. S. 2142 could have a serious negative impact on public education: (a) an erosion of financial support and (b) racial isolation

Mr. Chairman, it is estimated that S. 2142 would cost $4.7 billion (Approximately $2.5 billion for elementary and secondary education.) If this high cost program were enacted, especially in light of the history of federal education funding, it is unlikely that Congress would also move to significantly expand its commitment to public education. That is, a decision to assist private education is a decision to seal off new federal revenue sources for public education.

But more importantly, the bill could also seriously erode *local taxpayer* support. Local property taxes—which on the average account for 48% of total school revenues—are highly sensitive to voter reactions. One reason is that taxpayers do not vote on federal and state budgets, and therefore express general anti-tax sentiments through school budget votes. Another reason is that unlike the universal appeal of police protection, for example, education is supported by a definable constituency of users. This is where S. 2142 comes into play. If the bill draws a significant number of students into private education, public school finance would be seriously jeopardized, and, as we have just observed, there would be no alternative sources of funds from the federal level.

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[1] S. 2142 would, in part, provide taxpayers with a credit for one-half of the tuition paid for dependents enrolled in private elementary and secondary schools (not to exceed $500 per dependent).

In addition to endangering public school funding, tax credits could have a negative educational impact on those children remaining in the public schools. That is, to the extent that S. 2142 draws middle and higher income children into private schools, public schools will be identified as a "dumping ground" for (a) children who cannot afford private education, or (b) children who are otherwise unacceptable to private institutions. Taken to a realistic extreme, the rising costs and falling achievement associated with that type of setting describes a school system bound for failure.

Restated, if a significant middle class movement into private education does occur, public schools will be placed at the lower end of a socio-economic caste system. Further, while most private schools would not intentionally discriminate on the basis of race, a federal law of this kind would encourage resegregation in American education.[2]

III. Tax credits would result in unequal Federal treatment of public and private education

This tax credit legislation effectively provides private education general aid at funding levels which cannot be reconciled with existing federal assistance programs for public education.

First, as to dollar level, the public schools, which enroll 43.7 million students, receive about $5 billion in federal assistance. Under the tax credit proposal, private schools could indirectly receive an estimated $2.5 billion for the education of 5 million students. Therefore, in relative terms, the federal effort for private education would be at least 400% higher on a per pupil basis. We can see no justification for this disparity of federal emphasis—especially since, on an ability-to-pay basis, the public school parent is less able to pay property tax increases than the middle and upper income level parent is able to pay tuition increases.

In addition, it should be pointed out that private schools already receive federal assistance under programs such as: (a) school lunch ($200 million), (b) ESEA Title I ($80 million), and (c) equitable participation in other federal programs.

Aside from resulting in an inequitable level of funding, tax credits diverge markedly from the current format of federal assistance to education. That is, because current federal aid programs are institutional in nature, the bulk of the funds can be targeted to such high need areas as disadvantaged students, education of the handicapped, and vocational programs. To assure such targeting, school systems, including participating private schools, must employ strict accounting procedures (e.g., maintenance of effort, non-supplanting, excess costs, and comparability of services). However, S. 2142 which would now become the bulk of private school assistance, would be general aid in nature. In this regard, especially in light of the media visibility and state laws which surround public education, it is surprising that private schools would be held less "accountable" for their expenditure of federal funds. Indeed, under the tax credit proposal private schools may inflate tuition charges or use the additional funds for religious instruction. Therefore, the basis for this special treatment seems questionable at best.

IV. Tax credits do not meet first amendment tests

Apart from its negative impact upon public education, the tax credit concept must fall on Constitutional grounds. For example, in the case of *Committee for Public Education and Religious Liberty* v. *Nyquist* (93 S. Ct. 2955, 1973) the U.S. Supreme Court rejected a New York State tax credit provision which was practically identical to S. 2142. Therefore, it was of little surprise that upon introduction of S. 2142, Senator Moynihan, a strong advocate of the proposal, with apparent references to the Committee for Public Education case and to

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[2] Currently, over 55 percent of private school students come from families with $15,000 or more income, compared to 35.8 percent of public school pupils. Black and minority students make up only 8.3 percent of private school enrollment, although blacks and minorities make up nearly 17 percent of the school age population.

Meek v. *Pittinger* (95 S. Ct. 1753, 1975) argued against, but virtually conceded Supreme Court rejection of the bill (Cong. Rec. of September 26, 1977, S-15628).[3]

V. Tax credits: The premises of tax savings, beneficiaries, and public school monopolies

Proponents of the bill suggest that if *all* private schools closed down, public elementary and secondary education would have to expend perhaps an additional $10 billion to educate the children involved. While in 1974, private schools did spend $1,191 per pupil, it should be remembered that in an era of declining enrollments many public schools can accommodate students with little additional cost. Further, while a number of private institutions are in financial trouble, that cannot be said of all institutions. The point is, a program of this scope cannot be justified on the grounds that, nationally, public schools will be strapped in their efforts to accommodate students from closing private schools.

As to the beneficiaries of this tax credit proposal, a few comments should be made. Tax credits are variously described as relief to middle income families or relief to private schools. If this $2.5 billion program is intended to help middle income taxpayers, perhaps some determination should be made as to whether that, in fact, will be the actual result. More importantly, while we have expressed concern for property tax relief to lower income families and the education of their families, public education is definitely a valuable service to middle and higher income families. While we tend to hear of "horror stories" in public education, the overwhelming majority of public schools produce a good educational product. For example, in the area of staff, public school teachers are (1) certified, (2) at times recertified, (3) provided inservice training, and (4) paid at competitive salaries. These conditions are not guaranteed in private education. Putting aside those private schools which serve upper income levels, is the educational attainment of private school children vis-a-vis *similar* public school children such, as to justify the federal *encouragement* of private education?

Finally, from an educational standpoint, tax credits are premised on pluralism, freedom of choice and end the "public school monopoly." Such premises are myths—which may reflect a basic misunderstanding of the American educational process. If should be recognized that public education is not a monolith. There are 16,000 local school boards in the United States which, for the most part, are elected to reflect community needs. Further, these educational systems learn from each other. And within school systems, individual teachers, and the methods which they utilize, are important components of educational diversity. Certainly, there are classroom approaches and courses which are not offered in particular public school systems at particular times. But an honest appraisal of *educational* diverstiy requires sorting out those parents who desire a private education for religious grounds and racial grounds, as well as those parents who desire an education which is not within the economics of the S. 2142 target population. That is, we question the number of parents who would utilize tax credits to provide "real" educational diversity for their children.

CONCLUSION

Mr. Chairman, in the discussion of tax credits for private education there is an undercurrent of dissatisfaction being expressed with our system of public education. But if the public schools do require financial assistance or programmatic leadership, the federal solution should be one of increased federal commitment. Unfortunately, this bill does not seek to improve public education and indeed may pose a major threat to its future. Therefore, on behalf of the overwhelming majority of students who are not educated in private schools, we urge that the Committee reject this tax credit proposal.

Senator PACKWOOD. Next is Gregory Humphrey, representing the American Federation of Teachers.

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[3] Specifically, the Senator stated, "Now I would say to you that this bill is constitutional, by which I do not mean that I predict the Court tomorrow would hold it so."

STATEMENT OF GREGORY HUMPHREY, CO-DIRECTOR OF LEGISLATION, THE AMERICAN FEDERATION OF TEACHERS, AFL-CIO

Mr. HUMPHREY. Thank, you, Mr. Chairman.

I have sent a statement in advance to the committee, and I ask that it be included in the record.

Senator PACKWOOD. It will be put in.

Mr. HUMPHREY. I would like to just highlight a few points and hopefully answer any questions the committee might have. First of all, I want to thank you for the opportunity to air these questions. This is, I am sure you know, the first chance that any of us have had to really discuss them, since a very complete and thorough set of hearings were conducted on the House side in 1972 at which we also appeared, and I think it is wise to do this prior to passing a bill as potentially significant as this one.

I think in starting out I would like to say that the committee should consider the questions of a tax credit for elementary and secondary education separately from a tax credit for postsecondary education. I think that, as has been pointed out today, given the nature of the existing student aid programs from the GI bill on, that if the Congress has a mind to, there is certainly nothing blocking it from providing financial relief through tax credits for postsecondary education.

Our basic objection to a postsecondary credit is that we believe it is not the most efficient and positive way of providing the wherewithal for students to pursue a postsecondary education.

Earlier today, in one of the exchanges, there was a discussion over whether or not the Federal Government owns everyone's paycheck, and I don't really believe that is a consideration in terms of establishing whether or not to go to a tax credit. I think what the Congress should seek is the best possible way of aiding students whose families need aid to help them pursue postsecondary education. We believe that a tax credit might either be absorbed by higher tuitions or other fees, and in the long run no one will be provided any additional access to post secondary education.

Over the past year Congress has begun to seek a solution to this problem and in the last appropriations bill for labor, HEW, which just recently went into law, there was an additional amount of money set apart in the BEOG's program in order to make BEOG's grants more available to low- and middle-income people who owned a house or a small business or a farm. We supported that move because we do think there is a definite problem in terms of financing a college education. This beginning is something that could be extended and probably expanded within the dollar figures that a tax credit would cost to reach more of the target population a tax credit could.

I think that is the way to look at it. These are scarce dollars applied to a very specific problem, and what the committee ought to do, and I certainly do not wish to wrap myself in the flag.

Senator MOYNIHAN. The flag is all right. It is the Constitution——

[General laughter.]

Mr. HUMPHREY. I certainly wouldn't put much weight on my interpretation of the Constitution—but we are discussing the best way of providing educational access, and the facts show that a tax credit proposal is not the answer. For example, the CBO study on postsecondary education shows a tax credit as probably the least effective way of increasing access but certainly the tax credit is a valid area for the committee to consider and has no constitutional problem. The amount of dollars available would lead us to believe that given what the other actors in this particular drama are saying, that a better solution to this problem can be found.

In the area of elementary and secondary education, we think that there is an entirely different set of circumstances and problems that must be addressed.

If I might say, it seems to me that if the basis for moving on a tax credit in this area is to preserve the pluralistic nature of American education through a tax incentive for various groups to maintain their own views on what constitutes an appropriate education, a tax credit may not fit the bill.

That is to say that the cost of private elementary and secondary education has not necessarily worked to inhibit educational opportunities in the private sector. To my knowledge, there is no solid evidence to show costs as the major problem for private schools. I will say in the beginning that I am working from data and studies that were completed in 1972, and I will cite a few of these studies. I had hoped to provide them to the committee for inclusion in the record, but I couldn't find originals because they were done so long ago, perhaps given some time I can do that.

The President's Commission on School Finances and that Commission's panel on nonpublic education—this is a report from 1972—authorized two federally funded studies aimed at finding the reasons for declining enrollment in private schools. Both of these studies concluded that financial reasons alone were not the primary cause of the declining enrollment in nonpublic schools, including particularly Catholic schools.

Father Ernest Bartell, who administered the national economic study of Catholic elementary and secondary schools for the President's Commission on School Finances, wrote in the September 1, 1972, edition of America Magazine, a leading Catholic periodical:

> The combination of relatively low charges and the patterns of enrollment decline work to verify a good statistical estimate for the nation that tuition increases have probably not accounted for more than 20 percent of the enrollment decline since peak years.

If I may add, the statistics also show that while there is a decline in the Catholic sector of the parochial schools, there is an almost equal increase in the nonparochial side of enrollments in public schools. There are things working here which I do not believe have been fully explored.

At any rate, the weight of the evidence presented to it forced the President's Commission to write in their final report, and I quote again:

> And despite the pressing financial problems of the Roman Catholic schools, we find that their survival does not depend totally or even mainly on the amount of money available to them.

Further evidence of the incorrectness of looking at costs as the main problem for private education and reliance on tax credit to solve this problem come from a report named after an individual named Mr. Gurash. That report was highly praised by the Ways and Means Committee in 1972, when they heard his testimony, and I quote:

> There is no evidence of a strong relationship between changes in tuitions or student fees as proxy tuitions and declines in enrollments. To the contrary, evidence to date of the levels of tuition now charged seem to indicate that the demand for a Catholic school education is insensitive to current tuition levels. That is not to say the future demand may not be.

In addition, another study, which was called one of the most thorough surveys on the effects of Catholic education by a witness before the Ways and Means Committee who favored the tax credit, that is, a study made by Father Greeley and Mr. Rassi, sometimes referred to as the University of Chicago study, financed by the Carnegie Foundation, reported that cost as the reason why a child or children did not attend a Catholic school was given by only 18 percent of the parents of elementary school children and by only 22 percent of the parents of children in secondary school.

Finally, yet another report which very frequently gets into the discussion on these issues, the Fleischmann report, states in part:

> In the past, tuition in most Catholic schools has been so low that it has not played a major part in the enrollment decline. If enrollments were dropping primarily in inner cities, then it could be correctly inferred that even modest tuition presented an unbearable family burden, but enrollment is dropping even faster in affluent suburbs. The very families who could pay tuition most easily are the very ones choosing to send their children to free public schools. Further, fully one-third of the Catholic elementary schools that closed in the past five years in New York State, for example, charged no tuition at all.

Clearly there is a case here for further examination of the evidence of financial burden being the major cause of the decline of elementary and secondary education in the private sector.

It is not our position that tuition has no effect on this matter, and I would like to say that at this point, but we do believe that providing a tax credit may very well not cure the contingencies that the committee is out to cure.

I realize you have shown great forebearance today with the enormous number of witnesses who needed to be heard. I believe in this hearing some very unfair comparisons have been drawn between the ability of the public schools to provide a decent level of education and the ability of the private schools to do the same, and comparisons of their costs.

Several witnesses have hit on portions of it, but for the record, I think it would be regrettable if the committee did not understand that private schools have a sharp advantage in terms of determining performance. That is, they select their own student body. They may have various methods of admitting students up to and including competence and achievement. They certainly have an advantage in terms of cost comparison, in that their faculties are—teachers I am talking about, whom I represent—paid considerably less than teachers in the public sector, and there is even a very sound reason for that, not a good one, but one that is fairly obvious.

Teachers in the public sector in most cases have had strong associations or unions. They function under collective bargaining laws on the State level, that teachers in the private sector until recently have been denied. My union happens to organize numbers of private school teachers, and recently, over the last year, the National Labor Relations Board has attempted to establish its jurisdiction over the bargaining relationship there, and where the case stands now, in the Seventh Court of Appeals, it appears that the Board's attempt to establish jurisdiction may not be sustained in the courts, and that leaves school teachers in the private sector in a tenuous position.

They have no existing legal basis for their collective bargaining relationships, something I trust this committee can be quite sensitive to if it considers the implications of that.

Another fact: Private schools are not by necessity required to pay and provide services for the entire range of educational opportunity and need. I am reminded almost of the comparison with the post office, and I believe I will do that at some risk. That is that the Government has always seen fit to establish the exclusive ability of the post office to carry the mail. Even so recently as this past December in Rochester, N.Y., yet another private operation was sent out of business by a court for infringing on that jurisdiction.

A certain degree of exclusivity is needed by public education for the same reasons as in the private sector, mail companies of this sort only offer the most profitable types of service. They take first-class mail and they don't address themselves to the other needs of the country. They don't address themselves to moving periodicals, which are in fact subsidized through postal rates. They don't address packages or anything else. They take first-class mail, move it across town, and turn a handsome profit at less than it costs the post office to do that. They skim the cream.

In education the same thing exists. Private schools are not required to provide the extensive special education service, bilingual education services, or deal with the cost of things like title IX in terms of equal access on the basis of sex. All of these things do not apply to private schools. So they educate students who are easiest and cheapest to educate.

One final element in the equation——

Senator Packwood. That is the third thing you have said was the one final thing.

[General laughter.]

Mr. Humphrey. Of course, we will revise and extend this when we are finished. The last thing I do want to say on this, and I have sort of lost my place, but the ability——

Senator Moynihan. What in the White House do they call their last priority.

Mr. Humphrey. Their last priority. I think I have forgotten what I was going to say. Maybe I should just leave it at that. Thank you.

Senator Packwood. Thank you. I have no questions.

Senator Moynihan. I don't have a question so much, Mr. Chairman, as I have a desire to——

Mr. Humphrey. I was going to address the question of discipline. Public schools have, as everyone knows, certainly as the Senators here know, because of their interest in education, especially that in the cities, have a discipline problem that grows by the day, and much Federal action in that area has not been helpful—it has been interpreted on the local level to mean that teachers have no official support when they try to establish discipline. This question is one of paramount importance, and I think it is another area where private schools have an enormous advantage, and that is that they can enforce discipline. They are not forced to go through various due process, legalistic type hearings in order to establish it. They do it, and that is that. They can suspend or even force out students who are discipline problems.

That is something that is probably as great a learning disability as anything in the schools today. Excuse me.

Senator **Moynihan**. Mr. Chairman, I would like to very emphatically agree with Mr. Humphrey that some of the responsibilities of the public school system, particularly to disabled school children, greatly increase their costs, and the Federal Government has mandated these responsibilities with ever greater incidence of late, and that comparison is very clear. It wouldn't account for all of that disparity.

Mr. **Humphrey**. Teachers' salaries get into the equation——

Senator **Moynihan**. On the question of discipline—discipline is so important in a school system in terms of, how many minutes does the child actually get in the classroom when the teacher is teaching and everyone is listening. An undisciplined school can cut in half the actual teaching experience and learning experience.

If public schools cannot do it, maybe they should think about why can't they do it. I know your union wants them to do that. I would say with respect to the effect of cost on parochial schools, well, I do not know. The actual causation is obviously complex, but their enrollment has dropped almost in half since the fall of 1962. In elementary schools it has gone from 4.5 million to 2.5 million.

As for the Fleischmann Commission, when you next greet the person who wrote that, introduce to him the concept of multiple causality, will you? There may be one set of reasons operating in a central city and another set of reasons operating in the suburbs, and a third set of reasons in the countryside, and it is not necessary to find one uniform cause.

I have another thing I would like to speak to, Mr. Chairman. I wonder if you would not agree with me. I think it is impressive the way persons who are for this legislation and those who are against it in the various institutions, such as the school boards, the American Federation of Teachers, have come here and made their case. Persons who have strong interests in the public policy have come here representing the Americans United for Separation of Church and State.

The National Council of Jewish Women, the editor of Church and State—we have had constitutional lawyers and political scientists come from Chicago and Toronto. We have heard fair-minded and reasonably propounded arguments from every sector except the executive branch of the U.S. Government. It is the one place that would not send anyone here of any competence in this field to even talk to us.

Senator **Packwood**. And when they did send someone, they said the tax credit is more complex than the basic opportunity grant.

Senator **Moynihan**. Right. Was that wise? I mean, people have to have some confidence in government. You have to think that it has not been taken over by—the asylum has been seized—but it is just appalling that the Secretary of Health, Education, and Welfare, in the face of a commitment on his President's part, a commitment of the

President, could not come himself, could not send the Assistant Secretary for Education, who had nothing else to do. But he wouldn't do it. It is an act of disregard for a serious inquiry which we are trying to make.

Mr. Humphrey, I am just making you listen to this because you are a good-hearted fellow.

[General laughter.]

Senator MOYNIHAN. But you [indicating] are all down here. We will soon hear from some parents from the District. They are here. Why has the executive branch shown such disdain for us? We have a right to the hearing. We have a right to their attention and their views. I can't imagine the President instructed no one to come. Well, someone said no one should come, and here are 50 Senators—well, God bless him, 50, but Senator Humphrey is dead, but half of the Senate is proposing the most important piece of educational legislation since the Elementary and Secondary Education Act and that bloated bureaucracy, horrified at the information that English was being spoken, that evidence is being answered for, and that different points of view were being presented by people capable of intelligent argument, paralyzed by the prospect of facing such competition, it is hiding over there on Independence Avenue.

It is just such a comment upon the state of the bureaucracy, my grandfather would say of some of those people, Mr. Chairman, he used to say about certain people he didn't like, "He had the soul of a butler." Thank you.

[General laughter.]

Senator PACKWOOD. You are welcome to respond if you wish.

Mr. HUMPHREY. I don't think I could top that.

Senator PACKWOOD. Thank you very much, Mr. Humphrey.

Mr. HUMPHREY. Thank you.

[The prepared statement of Mr. Humphrey follows:]

TESTIMONY OF THE AMERICAN FEDERATION OF TEACHERS, AFL-CIO, BEFORE THE SENATE COMMITTEE ON FINANCE REGARDING TAX CREDITS FOR EDUCATIONAL EXPENSES, PRESENTED BY GREGORY A. HUMPHREY, CO-DIRECTOR OF LEGISLATION

Mr. Chairman and Members of the Committee: I want to thank you for the opportunity to present the views of the American Federation of Teachers on the question of tax credits for educational expenses. There are many constitutional questions involved in a tax credit proposal for elementary and secondary education. We will not address those questions. What the AFT is most concerned with is the effect of a tax credit on educational opportunity for post-secondary students and the effect of a tax credit on financing elementary and secondary education.

For higher education, it is our belief that a tax credit is not the answer to the financial problems of middle income parents seeking to finance a college education for their children. The problem stated simply is that federal student aid programs such as the Basic Education Opportunity Grants do not extend far enough to aid middle-income parents and students caught in a spiral of rising tuition.

First, if the dollars that the tax credit would cost were used to adjust the income cut-off of the BEOGs programs and provide additional funds for college work study, the cost squeeze on middle-income taxpayers could be solved. There is already momentum in this direction; the new federal regulations for BEOGs just approved this week to make it easier for homeowners, small farmers and businessmen to qualify for assistance, the amount of dollars necessary to pick-up middle income taxpayers would easily fit within the cost of the tax credit proposal.

A second consideration is the possible effect on tuition, which is to say in the long-run access to higher education. While a tax credit would provide limited fiscal relief for some parents, it would not in the long-run improve access to post-secondary education because of the regrettable tendency of tuitions to rise and absorb available resources with no-net-gain in access. The entire effect of tax credits on educational costs has yet to be explored sufficiently to justify spending such a large amount of money to produce such uncertain results. A final fact the Committee should consider is the pattern of tax relief spawned by a $250 credit. According to a Congressional Budget Office study entitled, "Post-Secondary Education: The Current Federal Role and Alternative Proposals of 1977," the pattern is as follows: below $9,000, 5% of the funds; $9,000–$15,000, 7% of the available funds; $15,000–$20,000, 9%; above $20,000, 79% of tax relief. This hardly constitutes evidence that middle-income taxpayers would be the primary beneficiaries.

For elementary and secondary education a whole different set af concerns must be dealt with. If the federal government were to provide a fiscal incentive for educational services other than those offered by our public education system, the resulting precedent might very well come back to hound the members of this Committee. It is not very difficult to apply the principle to other areas. The result for education could be disastrous—public schools are already suffering from declining enrollment due to the demographic shifts in our country. The outflow from a tax credit could further reduce the level of support for public education.

Conversely, there is little evidence that supports the premise that a tax credit would assist education in non-public schools. To us, it is a gross oversimplification to equate tax credits with assisting education. This is a false assumption based on a disproven premise. The premise offered is that tuitions are causing closing of schools and the decline in enrollment in nonpublic schools, especially Roman Catholic schools.

The problem for all education is the decline in enrollment—not "closing the schools." Closing of schools is the effect of declining enrollment more than it is the cause of declining enrollment in non-public schools.

To my knowledge, there is no concrete evidence to show that tuition costs are in fact the primary cause of declining enrollment in nonpublic schools. Therefore, there has been no rebuttal to effectively counter the contrary findings of studies which have been made on this subject which indicate otherwise.

The President's Commission on School Finances and that Commission's panel on nonpublic education authorized two federally-funded studies of the reasons for the decline in enrollment. In both of these studies, the conclusion was that financial reasons alone are not the primary cause of the decline in enrollment in nonpublic schools, including (and particularly) Catholic schools.

Father Ernest Bartell who administered the national economic study of Catholic elementary and secondary schools for the President's Commission on School Finances wrote in the September 1, 1972 edition of AMERICA magazine—a leading Catholic periodical: "The combination of relatively low charges and the patterns of enrollment decline work to verify a crude statistical estimate for the Nation that tuition increases have probably not accounted for more than 20 percent of the enrollment decline since peak years."

At any rate, the weight of the evidence presented to it forced the President's Commission to write in their final report: "and despite the pressing financial problems of the Roman Catholic schools, we find that their survival does not depend totally or even mainly on the amount of money available to them."

Further evidence of the incorrectness of what we could call an oversimplification is included in the Gurash report which was submitted to the members of the Ways and Means Committee and which report was highly praised by the Committee when Mr. Gurash testified during their hearings. In that report, the members of this study commission wrote: "There is no evidence of a strong relationship between changes in tuition (or student fees as proxy tuitions) and declines in enrollments. To the contrary, evidence to date, at the levels of tuition now charged, seems to indicate that the demand for Catholic school education is insensitive to current tuition levels—that is not to say the future demand may not be."

In addition, another study (which was called one of the most thorough surveys on the effects of Catholic Education by a witness before the Ways and Means Committee who favored tax credits), that is, the study made by Father Greely and Mr. Rossi, sometimes referred to as the University of Chicago study financed by the Carnegie Foundation, reported that "cost" as the reason why a child or children did not attend a Catholic school was given by only 18 percent of the parents of elementary school children and by only 22 percent of the parents of children in secondary schools.

Finally, we have evidence offered by the often-referred-to Fleischmann commission report. The author of part of this report and the editor of the report coauthored an article in the Saturday Review on July 22, 1972. I would like to quote just a small part of it: "In the past, tuition in most Catholic schools has been so low that it has not played a major part in the enrollment decline. If enrollments were dropping primarily in inner cities, then it could correctly be inferred that even modest tuition presented an unbearable family burden. But enrollment is dropping even faster in affluent suburbs. The very families that can pay tuition most easily are the ones that are choosing to send their children to free public schools. Further, fully one-third of the Catholic elementary schools that closed in the past five years in New York State, for example, charged no tuition at all."

In the face of such evidence, we believe it would be foolhardy for anyone to insist that tuition costs are, indeed, the primary reason why a majority of children who are not enrolling in nonpublic elementary and secondary schools are failing to do so simply because of tuition costs. Therefore, we must conclude that tax credits cannot possibly be the panacea that some of the witnesses before this Committee would have us believe. Even if they were good medicine, our "patient" doesn't have the disease they would "cure."

Far more important, I think, is the consideration of the practicalities involved in tax credits and tax remissions and we should ask ourselves: "Could tax credits or remissions be of significant help in assisting education?" Also, "How would tax credits actually work?"

Obviously, payment for tuition paid during a calendar year would have to be reported on a taxpayer's income tax return filed during the year after they were paid. In other words, the parent would first have to pay the tuition and then wait for many months before they could get either credit or tax remissions.

Except for those who are wealthy enough to wait long enough to realize the benefit of a tax credit or a tax remission, these would hardly give a parent the wherewithal to pay the tuition in the first place and hardly would be enough of an incentive to be crucial in the decision whether or not his child or children should attend a nonpublic school or be transferred to a free public school.

It would matter little to a poor family that, if they could pay tuition they would get it back, if they don't have the money to pay the tuition in the first place.

The tax credits plan being considered, moreover, has many other drawbacks. First of all, it does not relate to the quality of education offered in nonpublic schools, and this is an important factor in the decision of a parent in choosing a school for his child.

The American Federation of Teachers does support the concept embodied in ESEA that aid should follow the children and aid should be for education—something to improve education, whether that education is offered in public or nonpublic schools. This type of aid embodies the concept that generally applies to all federal aid to education, namely, that it should be used directly on behalf of the pupil and should prioritize among needs when resources are extremely limited as in the case of federal education dollars.

Thank you for the opportunity to present our views. I would be happy to answer any questions.

Senator PACKWOOD. Next is Harold Isenberg, representing Local 2092 of the New York City Federation of Catholic Teachers. Go ahead.

STATEMENT OF HAROLD J. T. ISENBERG, PRESIDENT, LOCAL 2092 (NEW YORK CITY), FEDERATION OF CATHOLIC TEACHERS

Mr. ISENBERG. I want to thank you, Senator, for this opportunity. I want to say that I not only appreciate your courtesy, but I certainly appreciate your sponsorship of the proposed "Tuition Tax Credit Act."

My name is Harold Isenberg. I am the president of the Federation of Catholic Teachers, Local 2092, AFT, in the New York Archdiocese. My union represents some 3,000 teachers in over 300 schools. We are the seventh or eighth largest school system in the Nation. I am making my remarks in consultation not only with my own local but with our affiliates who are part of the Metropolitan Catholic Teacher Conference, which consists of the Catholic teachers in New York State, and as a board member of the American Federation of Teachers' Nonpublic School Council and the recently formed National Association of Catholic School Teachers.

My remarks, as I say, reflect this consultation and the opinion of other Catholic teachers as well as my own union's beliefs. We are speaking for nonpublic school teachers in this case. We are not speaking for the American Federation of Teachers' interests in this area. Certainly in terms of Mr. Humphries statements, we find it, as Senator Moynihan earlier stated, difficult to understand why postsecondary tax credits might be different from elementary or secondary ones, and why at 19 or 18 one magically becomes more mature mentally than at 16 or 17 and less susceptible to alleged religious indoctrination.

While Mr. Humphries cited some statements for the AFT that go back to 1972 as to the cost factor in Catholic schools, I would say that it is now 5 years later, and I know that cost is a serious problem for our schools and for our parents. Yesterday you heard from Victor Solomon, educational director of the Congress of Racial Equality. He gave you a success story of the CORE community school.

Unfortunately, it is also a story of failure as well as success. This is because the CORE community school was found upon the ruins of Our Lady of Victory School. This inner-city parochial school was forced to close for financial reasons. Happily our union continues to represent those teachers but the parents were left with a void. There was an educational need.

Senator PACKWOOD. The parents now had a what?

Mr. ISENBERG. There was a void created by the school's closing, and the parents had a need that unfortunately the local public school did not satisfy, in terms of quality education.

While CORE moved in and was able to establish a school using the former parochial school teachers to bring to the community something they desperately needed and were willing to pay for, nonetheless another Catholic school had closed for financial reasons. It has been said that parochial schools are closing nationally at the rate of one per day. This could very well be. I have been in parochial education for 12 years. The school I taught at for the last 8 years was forced to consolidate, and no matter how you slice it—that means the school closed. It is no longer there, and finances were a reason. Our parents did not have the money to support the school. Their freedom of choice had been limited, and their options were reduced. Many nonpublic school parents have few alternatives if they do not choose the local public school, and I think that we all recognize that they should have the right to choose something different.

I know the Supreme Court has said a variety of things in the area of aid to nonpublic schools. It gets confusing to know which case to cite but the Court has noted that "laws should not chill the assertion of constitutional rights by penalizing those who wish to exercise them." I feel, unfortunately, that this is happening here. Without aid there is the danger that public schools will have a monopoly in the education field. I think that would be a disturbing departure from our tradition of educational pluralism.

I definitely agree with those who argue that public schools are entitled to more money. I think they have some justifiable complaints in terms of aid, but I do not see where they are going to have better schools at the cost of closing down nonpublic and parochial schools.

I also agree with Rabbi Shapiro who yesterday said that this is not simply a Catholic issue, it affects all. While it is true that most nonpublic schools are operated by the Catholic Church, this has unfortunately generated a lot of confusion. Ignorance and prejudice have also gone in the arguments of those who would deny our schools money. We hear many charges including one that somehow segregation is related to nonpublic school aid.

After 12 years of teaching in East Harlem and in the South Bronx, I can tell you that our schools reflect their neighborhood. We had a majority of black and Puerto Rican students and that is how it was in the neighborhood. If someone applied, we took them. If someone was not doing something right, we did not exercise our "incredible advantage" of throwing them out the door. In 12 years of experience, I have only seen three kids go out the door, and they went into other parochial schools.

I think that we have a responsibility to our students and we try to live up to it. Some seem to doubt this and equate parochial school aid with "indoctrinaid." I have seen that attitude and heard that term thrown around by some of the people who spoke here today.

I think, as has been said before, they don't want to let the facts creep into their opinions.

Our schools perform a dual function, and that has been pointed out by the Catholic bishops in their statement, "Teach Them," which relates to the nature of parochial schools. They provide religious values and they also provide quality education.

I would point out that the National Labor Relations Board accepted jurisdiction over Catholic schools because they determined that 85 percent of classroom time was spent on secular subjects. Consequently, a bill such as yours which would only reimburse 50 percent of tuition costs, seems quite in order with that determination.

If someone were asking for 100 percent reimbursement, I could see some possible constitutional questions raised as to whether or not this was "entanglement." However, I feel that you have been very careful in this instance, and that this would not be a valid argument.

If we want to talk about people being monolithically alike, I think that public schools are, when it comes to their exclusion of programs that have a religious dimension. It has been said that value-free education is an impossibility, since one value or another is inevitably conveyed by the educational process. Therefore, in not admitting certain areas of human experience to the classroom, public schools are implicitly teaching that these matters are of no great importance.

Parents, of course, have no remedy for this situation, because of the firmly held legal and judicial tradition that bars the introduction of specifically religious values or concepts into public schools. Therefore, if our parents really have freedom of choice, and the option of alternative forms of education, they may well want to turn to nonpublic schools, especially a church-related school that offers, "a difference where it counts."

We also want to point out that our schools are public schools in the sense that they perform a public service. While I am not a constitutional lawyer, just a social studies teacher, I believe this bill is constitutional. I see it not only as constitutional, but also as necessary, and appropriate. I certainly hope that it is enacted into law.

Thank you.

Senator **PACKWOOD**. Pat?

Senator **MOYNIHAN**. I would just repeat my earlier observation, which Mr. Isenberg observed with clarity and concision. Advocates of differing points of view have come before us, and the only people who are hiding from this debate are the President's Cabinet. It does not speak well of his Cabinet. I am sure it is not the President's doing. I just wanted to perhaps note, just draw attention to the fact that the well-known ability to get rid of any troublemaker—you are not a for profit enterprise any more than Oberlin College is, or the nearest public high school.

Teachers do not go around throwing people out of schools, raising prices, and gouging students. That is not what schools are all about, and as you say, the three people who in your 12 years of experience were expelled went to other Catholic schools.

There is a sort of demonology in this business, and the reality is rather disappointingly ordinary.

Mr. **ISENBERG**. Yes; I think you eloquently sum it up.

Senator **MOYNIHAN**. I do thank you so much, sir.

Senator **PACKWOOD**. Thank you.

[The prepared statement of Mr. Isenberg follows:]

STATEMENT OF HAROLD J. T. ISENBERG, PRESIDENT, FEDERATION OF CATHOLIC TEACHERS, LOCAL 2092, AMERICAN FEDERATION OF TEACHERS, AFL-CIO

Catholic teachers support and urge the passage of the projected "Tuition Tax Credit Act" (S. 2142) as proposed by Senators Packwood, Moynihan and others.

The fundamental right of parents to educate their children in non-public schools is threatened by spiraling educational costs and inflation. Government has heavily tipped the economic scales in favor of public schools so that non-public school parents exercise their right of educational choice only with severe personal sacrifice. The possibility of a public school monopoly would be a disturbing departure from the tradition of educational pluralism.

Non-public schools are public schools also in the sense that they too perform a public service by educating students. Much of the misunderstandings about the nature of non-public and church-related schools in particular is based upon ignorance or prejudice.

Most non-public schools are operated by the Catholic Church and even the U.S. Catholic Bishops have emphasized the dual nature of these schools. Cathlics have only been seeking consideration for the secular part of education in their schools. Even the National Labor Relations Board has accepted jurisdiction over these schools calling them "religiously associated" and not "completely religious."

Public schools by omitting certain areas of human experience like the religious dimension of the human experience "teach" that such matters are of little importance. Non-public school parents have no possibility of redress from this situation, since legal and judicial tradition bar the introduction of religious values or concepts into the public school. Catholic schools in particular offer "difference where it counts" in attracting parents and children.

Federal Income Tax benefits to parents of college, elementary and secondary school students will help in preserving the alternatives of choice for those preferring a non-public education. Because a school is religiously affiliated does not make it incapable of distinguishing between secular and religious functions. The Supreme Court "caveat against entanglements" is a "blurred, indistinct and variable barrier."

The proposed "Tuition Tax Credit Act" (S. 2142) gives aid directly to those who need it most, is simple and inexpensive from an administrative point of view and is not prohibitive in light of other governmental expenditures.

INTRODUCTION

My sincere thanks to the United States Senate Finance Subcommittee on Taxation and Debt Management for your courtesy in permitting me to make a presentation today. I am Harold J. T. Isenberg, and I serve as President of The Federation of Catholic Teachers, Local 2092, American Federation of Teachers, AFL–CIO. In addition, I serve as Chairman of the New York Metropolitan Catholic Teachers Conference, board member of the American Federation of Teachers National Non-Public School Council, and the recently formed National Association of Catholic School Teachers. My remarks have been formulated after consultation with many of the Catholic teacher leaders with whom we are associated.

The Federation of Catholic Teachers was incorporated in 1963 as The Catholic Lay Teachers Group and gained formal recognition and collective bargaining rights in 1969 for the 3,000 parish school teachers employed by the ten county New York Archdiocese. Ours is the only Catholic teacher union in the nation to represent both parish elementary and secondary school teachers on a diocesan-wide basis. We help educate approximately 115,000 students, many of them our own children.

PURPOSE

My organization has long been active in and concerned with issues of social justice both within and outside of the Church. This is why we strongly support and encourage the passage of the bill submitted by Senators Robert Packwood, Daniel Patrick Moynihan, and others, which, if enacted into law, will become known as "The Tuition Tax Credit Act" (S. 2142). We also applaud the effort of Senator Richard Schweiker who previously introduced a similar bill.

While we are grateful to Senator William Roth for reintroducing the issue of tax credits for parents to offset burgeoning tuition expenses, high college costs are not the only ones that prevent the nation's children from achieving an adequate education. One needs considerable economic resources to send his children to the college of their choice today, but acceptance at these schools is also based upon past academic performance. Our children and their parents need to be able to choose and afford the elementary and secondary schools of their preference. Getting a good education is a long-term process that begins with a child's earliest experiences. The alternatives of choice must be available to all at each step in the educational process to be meaningful. Let us not price our children and their parents either out of the college, elementary, or secondary school of their choice.

PARENTAL RIGHTS

Parents have the constitutional right to choose for their children schools other than those established by the State. This is a fundamental liberty acknowledged by the United States Supreme Court in *Pierce* v. *Society of Sisters* in which it is stated that, "The child is not the mere creature of the State." The right to educational choice is also reaffirmed in the Universal Declaration of Human Rights adopted by the United Nations and signed by this government. The rights of both parents and children to equal educational opportunities are not in conflict. Both must be protected in order to maintain their viability as rights, otherwise, the protection of one would interfere with or diminish the other. As was said in *Shapiro* v. *Thompson*, laws should not needlessly "chill the assertion of constitutional rights by penalizing those who choose to exercise them."

The effects of inflation, taxation, and rising costs make it increasingly difficult, if not impossible, for today's parents to exercise their constitutional rights in the area of education without some help and consideration from their government. Accommodations such as the proposed "Tuition Tax Credit Act" (S. 2142) must be enacted in justice in order to secure for our parents their educational rights. Government has heavily tipped the economic scales in favor of public schools so that our parents exercise their right of choice only with severe personal sacrifice. As Neil G. McCluskey, S.J., stated in *Catholic Education Faces Its Future:*

"The states have passed compulsory school attendance laws, and to assist parents to comply with this legislation, have established a system of free public schools, but without any provision in them for religious training. To achieve the common good of accessible free education, the states tax all citizens alike to form a common pool for the support of education. As a result the states are able to provide for their school-age children the substantial benefit of free education and certain auxiliary benefits related to schooling. For more and more Catholic families of moderate and small means, this can only take place within the type of school the state itself chooses. The higher taxes rise, the greater the squeeze on the Catholic parent and the less real freedom of choice he has in choosing a school for his child.

"Many Catholic parents judge that in all conscience they must send their children to a Catholic school because they believe that secular education during the child's formative years is best integrated with religious training. Or they may simply prefer this kind of schooling. The Catholic parent looks to the public school not reproachfully but regretfully.

"A family seeking to follow simultaneously the dictates of conscience and the compulsory-education law may not now, for all *practical* purposes, share in the state's provision for the common welfare. In the practical order, the state has set up what amounts to a religious test. Children in Catholic schools would qualify for free schooling and all related benefits provided by the state for its junior citizens EXCEPT that their parents have placed them in a Catholic school. If public benefits are so administered that citizens must do violence to their consciences in order to share in them, then the benefits are discriminatory. Perhaps Catholic parents should look at things differently. Their feeling of frustration, however, is not assuaged by telling them they are 'free' to have their own schools, as they watch increasing subsidies for public schools steadily pricing Catholic-school education out of the market."

THE QUESTION OF AN EDUCATIONAL MONOPOLY—THE ELIMINATION OF FREE CHOICE

We are not opposed to public schools nor challening their importance and worth, but we are unalterably opposed to an educational monopoly over our children. According to Thomas Jefferson, "Without the possibility of choice, and the exercise of choice, a man is not a man but a member, an instrument, a thing." The prospect of a public school monopoly would mean a disturbing departure from the American tradition of educational pluralism. We cannot have freedom of choice if the only viable educational system open to parents is the public schools. No matter how scrupulous or altuistic the monopolist may be, monopoly reduces one's options and therefore the freedom of choice. As C. Albert Koob and Russell Shaw pointed out in *S.O.S. for Catholic Schools:*

"The idea of monopoly in education is peculiarly abhorrent. Here the values at stake are of an entirely different and higher order than whether an automobile buyer shall have the option of choosing among the products of one or several automobile manufacturers. They belong to the moral and intellectual order, and in these areas of life the exercise of free choice is pre-eminently important. And it is essential that this possibility not be merely negative. (That is, the absence of coercion) or theoretical: There must, rather, be the possibility of genuine, practical free choice.

So far as education is concerned, this means that Americans should have both the right and the opportunity to choose from among diocese schools and school systems and that non-public schools must make up more than a 'token' system, but must be numerous enough to accommodate parents and students who choose this kind of school."

PAROCHIAL SCHOOLS PROVIDE QUALITY SECULAR EDUCATION

Frequently those who would deny our parents or their children some form of help ignore the fact that parochial and other private schools provide a great service to all the citizens of this nation. We, too, teach children to read and write—often times better than public schools. Test score results from Science Research Associates (SRA) indicate that New York Archdiocesan elementary school students consistently score a half year or more better than the National average. According to New York City Public School Chancellor Irving Anker, the City's public school student, however, scores only 40% on grade level with 60%

falling further behind. At one school in the South Bronx where Catholic school students are one year behind the SRA norms, the nearby public school's norms for students drawn from the same population are three years behind. We are public schools in the sense that we perform a public service.

If, for example, New York parochial schools were not providing an education for some several hundred thousand students, the taxpayers in our state would have to pay almost twice as much to the public schools to do it. In the New York City area the per pupil cost of educating a child in a Catholic elementary school is $500 per year as compared to public school costs of over $2,200. Allowing for contributed services for the cost of services supplied to Catholic school students out of the public school budget, and for the difference between elementary and secondary school costs, it comes out that the Catholic school child is educated at a cost of one-quarter to one-third the cost of educating the same child in a public school. As long as we are in existence and educate large numbers of children, more money is available per pupil for the public schools—not less. Some obviously still do not realize what a great bargain we are. Those who would blindly deny elementary and secondary school parents tuition relief to enable them to send their children to Catholic and other non-public schools should also realize that they are denying them the free exercise of their rights in the educational field.

AID OPPOSITION TO CATHOLIC SCHOOLS

This organization and its associates support of tuition tax credits is contrary to the position of our national union. However, it should be pointed out that the American Federation of Teachers has been more sympathetic on occasion than others with regard to assistance for non-public schools. Still, each local union is an independent autonomous unit able to adopt its own position on issues that affect it.

We recognize that there is opposition in some quarters to both the concept of tax credits and their extension to elementary and secondary schools. Much of this opposition is based upon Supreme Court cases in the area of aid to parochial schools. Much of what has been decided has been based upon prejudice and myth. Because 95% of the non-public elementary and secondary schools that would indirectly benefit from tax credit legislation are church-related is no valid basis for denying parents their constitutional freedom of choice.

THE IMAGE OF THE MODERN DAY PAROCHIAL SCHOOL

Since most of these church-related schools are operated by the Catholic Church, it is important to realize what a Catholic school is. When I began to think of this, a CBS–TV documentary of some ten years ago comes to mind. The camera cut to the face of a smiling, chubby Italian nun and then panned her classroom. As the children stood stiffly in rows, solemnly blessing themselves, she dismissed them for lunch while spraying them with Holy Water that she kept in a plastic squeeze bottle. I recoil even now when I realize that this is the image many non-Catholics have of Catholic schools: a huge, monolithic enterprise mindlessly spraying all within reach with the "superstitions" of the Catholic Church. However, if you really want to know what today's Catholic schools are all about and why our parents sacrifice to keep them open for their children, then read *Teach Them*, a statement of the United States Catholic Bishops on Catholic Schools, which states, in part, that: "These schools are notably successful educational institutions which offer not only high quality academic programs but also instruction and formation in the beliefs, values and traditions of Catholic Christianity." The schools exist for a two-fold purpose and no one is asking for reimbursement for the religious part of an education in a church-related or Catholic school. Under the projected "Tuition Tax Credit Act" parents would receive only 50% of tuition paid up to a maximum of $500 a year per dependent student.

RECOGNITION OF SECULAR FUNCTION OF PAROCHIAL SCHOOL

It is worthwhile to note that when the National Labor Relations Board assumed jurisdiction over potential labor-management disputes in Catholic schools, it did so, in part, because it found that only 15% of school time was spent on religious instruction. The Board ruled in a number of cases that, "* * * it is clear that the nature of the schools is not completely religious.

The schools perform the secular function of educating children and only concern themselves in part with religious instruction." Since *Roman Catholic Archdiocese of Baltimore*, the Labor Board has consistently ruled that Catholic schools are "religiously associated" and not "completely religious".

The dual role of non-public and especially church-related schools has been eloquently set forth by Associate Supreme Court Justice Byron White who stated in *Board of Education* v. *Allen:*

"Underlying these cases (previous decisions involving government assistance to non-public education), and underlying also the legislative judgments that have preceded the Court decisions, has been a recognition that private education has played and is playing a significant role in raising national levels, knowledge, competence, and experience. Americans care about the quality of the secular education available to their children. They have considered high quality education to be an indispensable ingredient for achieving the kind of nation, and the kind of citizenry that they have desired to create. Considering this attitude, the continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that these schools do an acceptable job of providing secular education to their students. This judgment is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education."

Like Justice White, we do not choose to cast our defense of non-public schools in the form of an attack on the motives or ideology of those in public education. Both non-public and public schools have made and continue to make enormous contributions to American society. Unfortunately, unlike non-public schools, public schools are the ones who are monlithically alike when they excluded from their programs religious values and the religious dimension of the human experience. It has been said that value-free education is an impossibility, since values of one kind or another are inevitably conveyed by the educational process. Therefore, in omitting certain areas of human experience from the classroom, public schools implicitly "teach" that these matters are of no great importance or concern and can reasonably be passed over by the student. Unlike other groups in society, our parents have no possibility of obtaining redress for this situation, since a firmly held legal and judicial tradition bars the introduction of specifically religious values or concepts into the public school. In contrast, non-public and Catholic schools can point to a "difference where it counts" in attracting parents and children to their schools.

It is obvious to most that the public schools serve not only the children they enroll but the total community through the students who are educated. The same is true of Catholic schools. We not only serve our students directly, but through them we serve the total community. This is the way in which any school carries out its role of service and it seems oddly short-sighted to ignore that fact in the case of non-public and church-related schools. Our schools have long been an integral part of the nation's educational establishment. They supplement in many ways the main task of public schools and provide an opportunity for experimentation in educational methods since they are relatively unhampered by bureaucratic red tape or inhibited by political pressures. They give a spur of competition to the public school—not the cutthroat competition of two institutions each trying to outdistance the other, but the fruitful competition of self-improvement. Both systems benefit and progress results.

HISTORY OF TAX-AID CONSIDERATION

Proposals for Federal Income Tax benefits for college tuition expenses of parents and/or students have been under active consideration for at least 12 years. Senator Abraham Ribicoff was the first to pursue the question with persistence. Former President Gerald Ford was also active as a member of the House of Representatives in seeking deductions for private school tuition. We agree with those who believe that the time has come to enact these benefits into law to help parents and/or students at all levels in the educational process.

The idea of indirect assistance to non-public institutions is not new. In the past the United States Congress has given aid to both public and non-public schools through the Reserve Officer Training Programs, the School Lunch Act of 1949, the Higher Education Facilities Act of 1963, the Higher Education Act of 1965, and the Elementary and Secondary Education Act, also of 1965.

Both the School Lunch Act and the Elementary and Secondary Education Act have provided benefits to students in non-public and church-related elementary and secondary schools. Tax credit legislation like previous constitutional forms of indirect aid to non-public schools would directly assist the parent and/or students in preserving the alternatives of educational choice. We feel that it would meet the constitutional test set forth by the Supreme Court in the *Allen* case:

"What are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the structures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."

Again, the Supreme Court reaffirmed the *Allen* decision in a case involving New York City's tax exemption of church property and observed:

"Making textbooks available to pupils in parochial schools in common with public schools surely was an 'aid' to the sponsoring churches because it relieved those churches of an enormous, aggregate cost for those books. Supplying of costly teaching materials was not seen either as manifesting a legislative purpose to aid or as having a primary effect of aid controvening the First Amendment. In so doing the Court was heeding both its own prior holdings and our religious tradition * * * With all the risk inherent in programs that bring about administrative relationships between public education bodies and church-sponsored schools, we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope' and one we have successfully traversed."

While it is true that the Supreme Court has admitted in *Tilton* v. *Richardson* to "only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication", we feel that tax credits for non-public elementary and secondary schools are constitutional, appropriate, and necessary.

Our High Court has seen no difficulty in approving federal grants and loans for non-public colleges and universities. It has rejected the notion that simply because the school is religiously affiliated, it is incapable of distinguishing between secular and religious subjects. Associate Justice White in dissenting on the *Lemon* v. *Kurtzman* case mused:

"Surely the notion that college students are more mature and resistant to indoctrination in a makeweight, for the Court in *Tilton* is careful to note the federal condition of funding and the enforcement mechanism available. If religious teaching in federally financed buildings was permitted, the powers of resistance of college students would in no way save the federal scheme. Nor can I imagine on what basis the Court finds college clerics more reliable in keeping promises than their counterparts in elementary and secondary schools * * *"

There has never been any proof that religious instruction does or would necessarily invade secular classes. In fact, secular teaching devoid of religious overtones can be successfully maintained since a good secular education is essential to the success of the religious mission of a church-related school. Unfortunately, in the past cases of direct aid to our schools the Court has created an insoluble paradox in which a state is unable to finance secular education if it permits religion to be taught in the same classroom; but if it exacts a promise that religion not be taught—a promise that non-public schools and their teachers are willing and able to keep—and enforces it, the State is seen as entangled in the "no entanglement" aspect of the Establishment Clause. This is particularly confusing considering the Courts' admission in the *Lemon* case that the "caveat against entanglements" is a "blurred, indistinct, and variable barrier".

ADVANTAGES OF THE TAX-CREDIT CONCEPT

Especially in view of the Supreme Court's decisions, it is imperative that Congress act on the proposed "Tuition Tax Credit Act" in order to maintain for all Americans the basic right we have to better ourselves through education and the right of parents to educate their children in non-public schools. We feel that the income tax credit concept has three basic advantages. First and foremost, it gives aid directly to those who bear the brunt of tuition expenses. Every student or parent of a student who is not self-supporting can take advantage of the credit. Second, the tax credit is simple and inexpensive from an administrative point of view. Finally, the cost of the program would not be prohibitive to those concerned with cost. We remind them that the government allows tax advantages to businesses and financially supports the advanced training of their employees while spending billions for write-off for foreign corporations and oil companies. Yet, the parent or student trying to attend the college, elementary, or secondary school of their choice has no such advantage. The current inequitable situation particularly hurts poor and middle income families. It is time we recognize our obligation to insure educational freedom of choice for all Americans by giving them as much assistance as possible.

We do not believe that tuition costs will dramatically rise as a result of this legislation and thereby totally absorb the tax credit. In terms of the New York Archdiocese, we would envision little change in elementary tuition rates and minor adjustments on the secondary school level. Elementary tuitions currently fluctuate from a free basis in some suburbs to almost $600 per year in some "inner city" schools. The secondary school tuition is rather standard and ranges between $800 and $900 annually. It should be pointed out that the loss of expected revenue from Mandated and/or Required Services money from New York State has not seen a significant rise in tuitions on either the elementary or secondary levels. The Archdiocese, its pastors and principals, are all very leery of the counter-productive nature of tuition raises which, coupled with the dropping birth rate, would create more problems in some areas than it would solve. Some tuition increases are likely and probable, but also inevitable in any event. Although we do not represent Catholic colleges, we see the same argument as valid on that level. We also do not believe that the current loans or grants available to college students are sufficient to meet their educational needs.

For all of the reasons set forth above and primarily to prevent a public school monopoly and to insure the fundamental rights of our parents and their children to viable educational alternatives, we urge passage of the "Tuition Tax Credit Act" as proposed by Senators Packwood, Moynihan, and others.

Again, our thanks for your time and consideration in this very important matter.

Senator MOYNIHAN. May I say, Mr. Chairman, you also saw an example of union democracy in action. The representative of the national union came before us and said, don't enact this bill, and immeditaely thereafter a representative of a subdivision came before it and said, do enact this bill, and that is the normal situation in which we find ourselves.

Senator PACKWOOD. And I believe that speaks to the strength and the necessity of diversity.

Senator MOYNIHAN. Diversity. The only place we have had a uniform non-response is the United States Government itself.

Senator PACKWOOD. We will conclude this afternoon with a group of parents from Anacostia, Ms. Jackson, Ferguson, Howard, and Greene, and I appreciate very much the patience they have demonstrated sitting through the hearings today.

I will place in the record prior to the start of their testimony an article from the Washington Post on December 25, 1977, on the school they will refer to, Our Lady of Perpetual Help, an article very laudatory of the school, explaining some of the difficulties it has had and the exceptional success it has had, not only in overcoming the difficulties but in educating the children who go there.

I will let you decide who is going to speak first and in what order you wish to speak. Will you give your names in order, left to right, so that the reporter will know which is speaking when she is trying to take her notes?

[The material referred to follows:]

[Dec. 25, 1977]

STRICT SCHOOL PLEASES PARENTS, PUPILS

PAROCHIAL STUDENTS EXCEED CITY NORMS IN LEARNING

(By Lawrence Feinberg, Washington Post Staff Writer)

In a run-down neighborhood in Anacostia where apartment windows are often barred and yards have been trampled bare, there is a Catholic elementary school where dozens of rose bushes grow outside the front door. Both the roses and the school are thriving.

For the 517 students—all but three of them black—who attend Our Lady of Perpetual Help Elementary, there is homework every night—even for children in kindergarten. There are required uniforms with blue ties for boys and plaid jumpers for girls. There are prayers that must be recited at least three times a day, even though 42 per cent of the students are Protestant.

Most of the teachers are strict. After school, students take turns sweeping classroom floors. Occasionally, there is a spanking if a youngster strays too far out of line.

But very few of the students at Our Lady of Perpetual Help miss their classes. Absenteeism at the school, which runs from kindergarten to eighth grade, averages only about 3 per cent a day—compared to 8 per cent absenteeism in Washington's public elementary schools and 18 per cent in the public junior highs.

Most importantly, academic achievement at Our Lady of Perpetual Help is much higher than in Washington's public schools. Its students can read, according to standardized tests, at nearly the national standards for their grade levels, a relative rarity here.

The school's average achievement levels are still not as high as the principal, Sister Loretta Rosendale, would like them to be. Most of the school's grades are about a half year below national norms.

But in the eighth grade, for example, the students at Our Lady of Perpetual Help average only seven months below the national norm in reading. Eighth graders in D.C. public schools average 2½ years below the norm, and those in Anacostia scored even lower last year.

"Sometimes when we look at the test results, we get discouraged," Sister Loretta said. "In Montgomery County, you know, they're a year or more above the norms, and we want ours to be the best. But I think we can pat ourselves on the back a little when we compare ourselves with D.C., which is where most of our students live. (About 15 per cent come from Prince George's County.) When our students go on to high school, they're prepared."

"I guess we have a reputation of being a traditional school," Sister Loretta continued. "I don't know exactly what a traditional school is, or whether I should be complimented or not. * * * We do expect the students to work here, and some things—like spelling words—the teachers just pound into them."

One Anacostia parent, Dorothy Nelson, whose son Wayne entered seventh grade at Our Lady of Perpetual Help this fall, said his grades are lower now than they used to be in public school. "But he doesn't mind going to school any more," she said. "There are no discipline problems, no bullies, and a lot more homework—about two hours a night."

"The kids are nicer here," said 12-year-old Wayne, who used to attend Moten Elementary School, which is across the street from Our Lady of Perpetual Help's upper school building on Morris Road SE. "They don't bully you or anything. Most of them do their homework."

But Sister Loretta stresses that Our Lady of Perpetual Help is "not just for the good kids."

"Sure we get kids who are scared of public school," she said. But we also get some who are not achieving there and causing problems. It may not be the fault of the school or of the parents, but just that the kid needs change.

"Here they have to behave reasonably," she continued. "And we just don't have major problems. There's an atmosphere that's pounded into their heads * * * If they can't do it (remain well behaved), then we just have to tell the parents that Catholic school is not for everybody, and ask them to leave. That happens, very rarely, but (the threat of expulsion) is there.

The school gives placement tests to youngsters applying after first grade, Sister Loretta said, and turns down those who score far below students already enrolled. But there are "no hard and fast cut-off points," she said, and sometimes low-scoring applicants are admitted if they seem well motivated.

With two buildings—one for kindergarten through fourth grade, the other for fifth through eighth—Our Lady of Perpetual Help is now the largest Catholic elementary school in Washington.

There are 24 others in the city, plus 12 Catholic high schools, with an overall enrollment this year of 12,120 students. The total is down just 59 students from a year ago—about one-half of 1 per cent—compared to a 4.7 per cent enrollment decline this fall in the city's public schools.

Since 1965, the number of students attending Catholic schools in both Washington and its suburbs has dropped by about a third, which is roughly the same as Catholic school enrollment trends nationwide. Over the past four years, however, the rate of decline has been rather slight, and the Catholic schools here, particularly those in the city, have attracted substantial numbers of Protestants, most of them black.

This fall non-Catholics made up 35 per cent of the enrollment in Washington's Catholic elementary schools, compared to 21 per cent just four years ago and less than 5 per cent in 1965. In the Maryland suburbs, which are also part of the Washington archdiocese, non-Catholics comprise 9 per cent of the Catholic students this fall, compared to just 2 per cent in 1973.

"The situation in our (Catholic) schools has stabilized," said Leonard De Fiore, the superintendent of schools for the Washington archdiocese, "and non-Catholics have become an important factor. It used to be that the idea of having many non-Catholics in the Catholic schools just wasn't a possibility. The Catholic Church didn't think about it. The parents didn't think about it. But now it exists in every metropolitan area, particularly among blacks. I always see it as a great compliment that (non-Catholics) are willing to send their children to Catholic schools."

All Catholic schools give preference to Catholics in admissions, De Fiore said, and all children attending Catholic schools, no matter what their faith, must take the same Catholic religion classes daily and attend mass, although Protestants do not take communion.

Every year, Our Lady of Perpetual Help School produces a trickle of converts—families as well as children, said the Rev. Peter J. Kenney, the pastor of Our Lady of Perpetual Help Church who has general authority over the school. But he explained: "We don't look at the school necessarily as an agency of proselytizing * * * we do want to expose people to a system of Christian values. We believe you can't compartmentalize religion and say it is just something you confine to 20 minutes a day."

Lillian Carter, who is a Methodist, has had two children in the school for the past seven years.

"At first it was very hard for me to explain to them about not being Catholic," she said. "They wanted to be confirmed in second grade like everyone else. I told them to wait until they turned 12 and then they could make up their own minds. * * * Now they've become very active in the Protestant church, and there's no pressure on them at the school to become Catholic."

Father Kenney said he is worried by the increase in the school's tuition, up by $100 a child in the past two years. The rate now is $330 a year for parish members, whose education is subsidized by other church income, and $505 for non-members, who pay full cost. There are discounts for families with more than one child in the school.

The charge for parishioners is about average for Catholic elementary schools in the city, but about 25 per cent more than average fees in suburban Catholic schools, whose parishes can afford bigger subsidies.

The tuition still is much less, however, than in non-Catholic private schools, where charges often exceed $2,000 a year. "We don't want to become an elite school," Father Kenney said. "But with costs ascending we are screening out low-income people." Even so, slightly more than half of the children at the school are eligible for federal aid given to youngsters from poor families. About 15 per cent of the students, Father Kenney said, come from families on welfare. They pay tuition, he said, but at a reduced rate of $15 to $25 a month. They are also expected to contribute personal service to the parish.

"I sacrifice. Believe me I do," said Victoria Davis, who lives in the Barry Farms public housing project and sends two sons to Our Lady of Perpetual Help. Mrs. Davis said she pays $25 a month for tuition out of $365 in income from welfare and child support. She said she works regularly as a volunteer in the church kitchen.

"The school is worth every penny I pay for it and all the time I spend too," she said. "You have to be willing to forfeit some of what you have to help your children.

"It's a very bad neighborhood out here, and when your children go to public school they're in the same environment. I send mine to Catholic school because I want them to get out of it even though I can't."

Inside the school's 68-year-old building at 1409 V Street SE, most of the rooms, which house kindergarten through fourth grade, have curtains on the windows, rocking chairs for teachers, and carpets in a corner for children to sprawl on. Last week they were decorated profusely for Christmas.

"The parents and the priests do all the painting and repairing," said Sister Jane Burke, the principal of the lower school. "They really work at trying to make it something nice."

The upper grade school; built 20 years ago, is located next to Our Lady of Perpetual Help Church, a circular modern building, on 16 acres on a hill that is the second highest point in Washington. It has a sweeping view of the capital's major buildings and monuments.

In both school buildings classes range from 28 to 38 students, far smaller than they were a decade ago when they sometimes reached 45, and considerably larger than the average class size of 25 in D.C. public schools.

Compared to the public schools, teachers' salaries are low—only $4,325 a year for the six nuns and no more than $11,000 a year for the 11 lay teachers. Teachers' salaries in the D.C. public schools range from $11,824 a year up to about $23,000.

"It's been pretty special teaching here," said Lucinda Jasper, a sixth grade teacher. "The pay has been low, but we don't have the problems the public schools have. We can spend our time on teaching."

Nuns and lay teachers now dress alike, except for one, Sister Kenneth Marie, who still wears a veil. Several of the parents interviewed for this article said they wished the nuns had stayed in their habits. All of them said they were glad their children had to come to school in uniform even though many of the older students said they don't like wearing the same clothes every day.

"The uniforms make all the children equal no matter what their parents earn," said Benjamin Contee, the PTA president. "All in all, I think they're slightly cheaper than having to buy different clothes. * * * The children can be individuals even when they're in uniform."

The school's policy of occasionally spanking children who misbehave also seems to have parental support.

"I want my son to go to Catholic school because he'll get discipline there," said Beverly Lucas. "They're not afraid to spank your child, and I say, 'Yes, if a child is bad in class, then you spank him.' But it's no way as strict as it used to be."

Supt. De Fiore said the Catholic school board has a policy against corporal punishment. "If there's a specific complaint," he said, "we investigate. But we have many other things to concern ourselves with."

Even though cost at Our Lady of Perpetual Help has risen to about $500 per pupil a year, they are still far less than the $2,000 a year per pupil cost in D.C. public schools.

Besides having relatively large classes, low-paid teachers, and low maintenance costs, the school keeps costs down by cutting back on what Father Kenney calls frills. Unlike public schools, Our Lady of Perpetual Help has no nonprofessional aides—parent volunteer instead. There are no special teachers for art, music, or physical education; these subjects are taught by regular classroom teachers. For children in the upper school, physical education classes are held in a park, except in bad weather when they switch to the church social hall.

The one thing the school doesn't skimp on is books. Every afternoon most children carry home big satchels of them to do their homework. By contrast,

when children leave Moten, the public school across the street, few take books with them.

"I like to see them taking all those books home," Dorothy Nelson said. "That's the way a school ought to be."

STATEMENTS OF ADRIANNE B. JACKSON; SANDRA J. FERGUSON; ZEFFRE T. HOWARD; AND NEWVELVET WASHINGTON, ANACOSTIA PARENTS GROUP

Ms. **Howard**. Zeffre Howard.

Ms. **Jackson**. Adrianne Jackson.

Ms. **Ferguson**. Sandra Ferguson.

Ms. **Washington**. NewVelvet Washington.

Senator **Packwood**. Let me ask you again when you talk to use the microphone, so that people can hear you.

Ms. **Jackson**. Good afternoon. We are the parents of children enrolled in Our Lady of Perpetual Help, a school in Washington, D.C. We appreciate the chance to testify on Senate bill 2142 held by this committee on taxation and debt management. We are prepared to testify as a single panel of witnesses. I will do so first.

My name is Adrianne Jackson. I am a divorced mother of two daughters and a management analyst at $23,000 annually with the Department of Housing and Urban Development. My daughters, Monique and Tremia are first and sixth graders, and attend parochial schools, and have for the past 5 years.

I attended public school in this area, and desired better educational opportunities for my children than I was privileged to have. In 1976, I moved from Washington, D.C., to Maryland, and decided to transfer them from OLPH to a public school, after having heard how much better public schools were in that area. After approximately 3 months, Monique and Tremia asked that I transfer them back to OLPH.

From our conversations of their school experiences, and my own investigation, I found that they were exposed to a different environment which consisted of a demonstrated lack of, one, individual intellectual capacity building, two, respect, and three, discipline. I decided in August of 1977 to move and transfer them back to OLPH because of their expressed concerns and my own unhappiness.

We moved to an area which is convenient in distance to my job as well as the school, and also affordable. Before moving to Maryland—presently I drive approximately 9 miles in rush-hour traffic to school in two different locational sites, which is in the opposite direction of my place of employment. I park my car and ride public transportation to work. This process reverses in the evening, and is necessary due to the lack of dependable public transportation, which at any unknown time can produce tardiness.

I had to buy a new car 2 years ago as well as pay $740 for tuition, $250 for uniforms, all excluding extracurricular activities and transportation. I did this to aid in assuring their punctuality in receiving the best possible education. They are back in OLPH after 1 year, and are mentally and physically comfortable in their educational environment, which to me is a major element in their development and welfare.

These sacrifices are just to name a few, and are well worth the benefits being provided. Thank you.

Ms. **Howard**. Good afternoon. I am Mrs. Howard, and I work for Metro, 600 Fifth Street.

Senator **Packwood**. Speak into the microphone or the people behind you can't hear you.

Ms. Howard. Good afternoon. I am Mrs. Howard, and I work for Metro, 600 Fifth Street, as a receiver of revenue and my income is $16,000 a year. I support my two sons and my mother from that income. My oldest son, Derick, is a 12th grader, and attends St. Stephen's School in Alexandria, Va. He must commute to and from school by bus. This procedure alone, not including spending money, costs $1.80 per day, since he must be commuted during the rush hour.

The tuition at St. Stephen's is $3,000 a year. However, he is granted a scholarship every year between the amount of $2,200, and I pay the rest, which is in the neighborhood of $800 a year.

My youngest son, Robert, is a fifth grader at OLPH, and the tuition is $500 per year. With the tuitions combined, I pay a minimum of $1,300 a year, and the cost of uniforms and books and other fees per year. It is not easy, but I must sacrifice to pay the bill. I am sure I can avoid this by sending them to public school. However, I am strongly in favor of private school education for several reasons, mainly because of the higher quality of education compared to most all public schools, especially in the southeast area of Washington, where I live, and I also think that the students are better disciplined and supervised in private schools than in public schools, and the teachers have more concern for their students, where in a great deal of public schools teachers look on school more or less as another job, instead of really trying to help the students.

Also, I feel if the student would like to attend college, his or her chances are better. They have a better variety of selections, and they are better off if they were graduates of a private school. I thank you.

Ms. Ferguson. Members of the Finance Committee, I appreciate the opportunity to appear here. I am Sandra Ferguson, a concerned mother of four school-aged children, three of which are now attending public schools, and one in parochial. I attended public schools myself. However, as my children approached school age, I noticed a change in the quality of the education in the public school system.

My older children were previously enrolled in the Catholic school. Due to financial difficulties, I could no longer afford the payment. I had to place them in the public school system. To me, this meant I had no longer the choice between parochial and public schools.

My family and I live on a moderate income. I volunteered in the parochial school and later on was offered a job, which pays me a nominal fee to help pay tuition so that my younger son would have the same opportunity as my older children, and that is to get a good basic educational background in his formative years.

After my older children made the transition from Catholic to public schools, the noticeable difference in their progress was heartbreaking for me. They were further advanced in their studies, so at times they were bored. They would get very depressed about going to school because of the attitudes and disciplinary problems of some students. The environment was not stimulating for them. They were discouraged because the books and other school equipment were inadequate.

This is why I am here. I urge you to pass this bill, because it would give me and other parents like me an opportunity to enroll my children back into Catholic schools because I want you to save the children and save our schools. I believe better schools and better education make for better citizens. Thank you.

Ms. WASHINGTON. Good afternoon. My name is NewVelvet Washington. I work for the Federal Government, and I am the mother of six children. I have five children attending Catholic schools. Four of my children are in Catholic high school, and I have one in Catholic elementary.

Tuition is costing me $3,100 this year. Books cost around $265, which does not include uniforms, school supplies, and transportation costs, which I also have to pay.

I know that you are wondering how and why I send my children to Catholic school, for this tremendous expense, when they could attend public school free. Well, this is a tremendous burden and a great sacrifice, because I am not wealthy. In addition to this, I attend the University of the District of Columbia at night, which is another tuition, transportation, books, and supplies. I hope to become a special education teacher with a concentration in reading sooner or later.

With the great cooperation coming from the Catholic schools I have been given the special privilege of paying my children's tuition in monthly installments, and I have been given an extended deadline to finish paying all of the tuitions by April 15. Thanks to the grace of God, I have been able to meet this financial obligation each year. So, my special privilege is continued.

You see, Catholic tuition is supposed to be paid at some schools before the children enter in the fall, and at others half is due before and the other half before Christmas vacation, because the schools have financial obligations to meet also.

I am on a very tight budget, and whenever a medical or any financial emergency arises, that throws my budget off, and I must go rob Peter to pay Paul. What I mean is, I must pay my rent, buy food, and meet my tuition deadlines each month, so that other bills have to wait when this happens.

My children are simply beautiful. They understand what a financial burden keeping them in Catholic school is, so they don't ask for a lot of unnecessary things. They do with a lack of clothes and get only the bare necessities, and they don't ask to go to a lot of things that teenagers want to do that cost money. They always consider the cost and whether they can do something else that is equally as enjoyable that is free.

They study very hard, and make very good grades in school. Because of this, they have partial scholarships and grants, which save me $1,445 this year in tuition costs alone. That is why my tuition cost this year is $3,100. The reason I am sending my children to Catholic school is because of the dedication of the teachers.

My children are getting a better, superior standard of education. The attitudes of the students toward the teachers and the teachers toward the students in trying to help one another to accomplish their goals in the future is greater. The approach to discipline, establishing moral standards, respect for others and their property and mainly themselves, is very extensive toward our society.

In addition, they are taught religion on all levels.

Having had my children in public schools for 5 years, first, I feel that I can make an honest comparison between the two. The public schools have no Christian formation now that I know of, which I feel is necessary for children to have something to believe in. The dedication of the teachers is lacking. The respect of the students toward the teachers and the teachers toward the students is missing.

The educational standards are extremely low. If your child is not a fast learner, then they are simply left behind. Stress and emphasis are given to the quick learners, and the others suffer. There is hardly any discipline at all. Moral standards, respect for others and their property and mainly themselves, are low.

In my opinion, all of these points can be and need to be improved. If this bill is passed, which I am wholeheartedly for, this will help to insure my children's continuation in Catholic school, and also open up an avenue for others to send their children. Thank you very much.

Ms. JACKSON. We intend to strongly support this proposed legislation as it would be of great assistance to persons such as ourselves in our effort to provide our children with the best education available. We want to thank you for your consideration.

Senator PACKWOOD. More than any other group of witnesses, I think that you portray exactly what Senator Moynihan and I and Senator Roth and the others who are sponsors of the bill are trying to do. You refute the argument that this is a white, elitist, rich persons' bill, to enable them to take off part of the costs of the tuition to send their son or daugher to Dartmouth. That is not primarily intended. There is a limitation of $500 that you can take for any student that you pay tuition for, which is not going to be of overwhelming consequence to someone sending their child to an upper class, expensive New England college.

To you, to all of you, this bill can probably mean the difference between whether or not you can continue to afford to choose the kind of education you want, and without this kind of a bill you may have no choice at all. I cannot tell you how much I appreciate your taking the time to come.

Pat?

Senator MOYNIHAN. I would like to echo what Senator Packwood has said. There is nothing like a touch of reality, and I suppose that a surprising number of the witnesses in this somewhat middle-aged group of people we have had here can tell about what it is like to pay for a son or a daughter at college, but thank God we have some young people who still have children in elementary and secondary school. You are the first ones we have had.

Ms. Ferguson, if you had the legislation before us which would give you a tax credit of up to $500 for half the first payment, this would make a difference to you, would it?

Ms. FERGUSON. Yes, it certainly would.

Senator MOYNIHAN. How many children would you send back to Our Lady of Perpetual Help?

Ms. FERGUSON. I have one, as I stated, in parochial school now, and I would send two back.

Senator MOYNIHAN. It is just that much. It is a small difference, but there is an old saying in the South that a dollar ain't much if you've got one.

Mrs. Washington said something which struck me, and she spoke openly and properly. We are here to learn about the question of Christian formation, as you put it. Are you Catholic, Mrs. Washington?

Ms. Washington. Yes, I am.

Senator Moynihan. What about the other ladies? Mrs. Howard?

Ms. Howard. I am Pentacostal.

Ms. Jackson. I am Lutheran.

Senator Moynihan. A Pentacostal, a Lutheran——

Ms. Ferguson. I am Protestant.

Senator Moynihan. That won't do.

[General laughter.]

Senator Moynihan. Go on.

Ms. Ferguson. I attend different churches. I don't really have one religion.

Senator Moynihan. You really are Protestant.

[General laughter.]

Ms. Ferguson. That is why I said that. I don't belong to any one faith.

Senator Moynihan. So we have four different church affiliations here, and this hasn't made any difference in the experience of your children?

[All the witnesses shake their heads in the negative.]

The point is simply that these schools are in a very large degree public schools themselves. They take people in the neighborhood. I am sure that the Lutheran schools and the Baptist schools that we have heard from do the same. They may make an effort at that. One could almost regret the diminishment of doctrinal energies, but it is a reality, and I would just leave one thought, Mr. Chairman, and that is that one and one-half centuries ago, when this argument first begin in America, there was a much clearer perception than there is now that a decision not to have any religion taught in the school was a religious decision, and it is just as much a religious judgment not to teach certain forms of doctrine as it is to do so, and just because the "public" schools don't doesn't mean they avoid the question. It just means that they come down on one side of it, and you could have a different view. That's all, and that is what makes horseraces, and that is what makes, it seems to me, an interesting society where you have some alternatives.

Mr. Chairman, I would like to thank these ladies who have certainly brought a touch of reality into these hearings, and we do appreciate your coming. Let's see, two of you work for the Federal Government, do you not? I hope they will be generous about granting you leave for the afternoon.

Ms. Jackson. Senator, I would just like to bring out one point. I have a nephew who has attended Our Lady of Perpetual Help for 6 years. He transferred to Honolulu, Hawaii, and I received a letter from him where he is attending the schools out there, and he said the schools out there, so I know it is not just the location that makes a difference, are 1 year behind where he is now.

So, there is a difference, and I don't think it is just D.C.

Senator Moynihan. There is nothing wrong with the schools in Hawaii. You are doing well by your children. They are lucky.

Senator Packwood. Thank you very much.

That will conclude our hearings today. We will take up the last day tomorrow at 9:30.

[Whereupon, at 3:45 p.m., the hearing was recessed, to reconvene the following day at 9:30 a.m.]

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